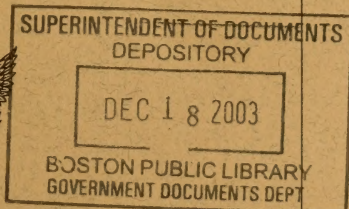


[H.A.S.C. No. 108-4]

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HEARINGS
ON
NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2004—H.R. 1588
AND
OVERSIGHT OF PREVIOUSLY AUTHORIZED
PROGRAMS
BEFORE THE
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION
—
READINESS SUBCOMMITTEE HEARINGS
ON
TITLE III—OPERATION AND
MAINTENANCE
DIVISION B—MILITARY CONSTRUCTION
AUTHORIZATIONS
—

HEARINGS HELD
MARCH 13, 18, 18, 20 and 25, 2003



HEARINGS
ON
NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2004—H.R. 1588
AND
OVERSIGHT OF PREVIOUSLY AUTHORIZED
PROGRAMS
BEFORE THE
COMMITTEE ON ARMED SERVICES
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AUTHORIZATIONS**

HEARINGS HELD
MARCH 13, 18, 18, 20 and 25, 2003



U.S. GOVERNMENT PRINTING OFFICE

88-295

WASHINGTON : 2003

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- Written Statement on Proposals to Amend the Marine Mammal Protection Act of 1972, on behalf of Animal Protection Institute, Center for Biological Diversity, Cetacean Society, et.al.
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A BILL

For the purpose of providing for the payment of the interest on the Federal debt, to provide for the payment of the interest on the Federal debt, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 2004".

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

SECTION 301. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of providing for the payment of the interest on the Federal debt, to provide for the payment of the interest on the Federal debt, and for other purposes.

SECTION 302. AUTHORIZATION OF APPROPRIATIONS.

- (1) For the Department of Defense, \$11,111,111,111.
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- (100) For the Department of Defense, \$11,111,111,111.

H. R. 1588

To authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2004, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2003

MR. HUNTER (for himself and Mr. SKELTON) (both by request) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2004, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Defense Authorization Act for Fiscal Year 2004”.

* * * * *

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

Funds are hereby authorized to be appropriated for fiscal year 2004 for the use of the Armed Forces of the United States and other activities and agencies of the Department of Defense, for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

- (1) For the Army, \$24,965,342,000.
- (2) For the Navy, \$28,287,690,000.
- (3) For the Marine Corps, \$3,406,656,000.
- (4) For the Air Force, \$27,793,931,000.
- (5) For the Defense-wide activities, \$16,570,847,000.
- (6) For the Army Reserve, \$1,952,009,000.
- (7) For the Naval Reserve, \$1,171,921,000.
- (8) For the Marine Corps Reserve, \$173,952,000.
- (9) For the Air Force Reserve, \$2,179,188,000.
- (10) For the Army National Guard, \$4,211,331,000.
- (11) For the Air National Guard, \$4,402,646,000.
- (12) For the Defense Inspector General, \$160,049,000.
- (13) For the United States Court of Appeals for the Armed Forces, \$10,333,000.
- (14) For Environmental Restoration, Army, \$396,018,000.

- (15) For Environmental Restoration, Navy, \$256,153,000.
- (16) For Environmental Restoration, Air Force, \$384,307,000.
- (17) For Environmental Restoration, Defense-wide, \$24,081,000.
- (18) For Environmental Restoration, Formerly Used Defense Sites, \$212,619,000.
- (19) For Overseas Humanitarian, Disaster, and Civic Aid programs, \$59,000,000.
- (20) For Drug Interdiction and Counter-drug Activities, Defense-wide, \$817,371,000.
- (21) For the Defense Health Program, \$14,876,887,000.
- (22) For Cooperative Threat Reduction programs, \$450,800,000.
- (23) For Overseas Contingency Operations Transfer Fund, \$50,000,000.

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2004 for the use of the Armed Forces of the United States and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

- (1) For the Defense Working Capital Funds, \$1,721,507,000.
- (2) For the National Defense Sealift Fund, \$1,062,762,000.

SEC. 303. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2004 from the Armed Forces Retirement Home Trust Fund the sum of \$65,279,000 for the operation of the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the Naval Home.

Subtitle B—Environmental Provisions

SEC. 311. CLARIFY DEFINITIONS OF SALVAGE FACILITIES AND SALVAGE SERVICES TO INCLUDE ENVIRONMENTAL RESPONSES AND RELATED EQUIPMENT.

(a) SALVAGE FACILITIES.—Section 7361(a) of title 10, United States Code, is amended by adding at the end the following new sentence: "Salvage facilities include, but are not limited to, equipment and gear utilized to prevent, abate or minimize damage to the environment."

(b) SETTLEMENT OF CLAIMS FOR SALVAGE SERVICES.—Section 7363 of such title is amended by adding at the end the following new sentence: "Claims for such salvage services include, but are not limited to, those for enhanced or special compensation for services that prevent, abate or minimize damage to the environment."

SEC. 312. AUTHORIZATION FOR FEDERAL PARTICIPATION IN WETLAND MITIGATION BANKS.

(a) IN GENERAL.—Chapter 159 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2697. Authorization for Federal participation in wetland mitigation banks

"The Secretary of a military department engaged in any activity resulting, or which may result, in the destruction of or impacts to wetlands is authorized to make payments to wetland mitigation banking programs and consolidated user sites ('in-lieu-fee' programs) that have been approved in accordance with the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act as an alternative to creating a wetland for mitigation on Federal property for construction projects. These payments may be included as eligible project costs for military construction."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2697. Authorization for Federal participation in wetland mitigation banks."

SEC. 313. PROVISION TO EXEMPT RESTORATION ADVISORY BOARDS FROM THE FEDERAL ADVISORY COMMITTEE ACT.

Section 2705 (d)(2) of chapter 160 of title 10, United States Code, is amended by adding at the end the following new subparagraph:

"(C) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any restoration advisory board established by the Secretary pursuant to this subsection."

SEC. 314. REPEAL OF MILITARY EQUIPMENT AND INFRASTRUCTURE: PREVENTION AND MITIGATION OF CORROSION.

(a) IN GENERAL.—Section 2228 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 131 of this title is amended by striking the item relating to section 2228.

Subtitle C—Workplace and Depot Issues

SEC. 321. REPEAL OF TIME LIMITATION ON EXCLUSION OF EXPENDITURES ON CONTRACTING FOR DEPOT-LEVEL MAINTENANCE.

Section 2474(f)(2) of title 10, United States Code, is amended by striking “for fiscal years 2002 through 2005”.

SEC. 322. EXCEPTION TO COMPETITION REQUIREMENT FOR DEPOT-LEVEL MAINTENANCE AND REPAIR.

Section 2469 of title 10, United States Code, is amended by inserting at the end the following new subsection (d):

“(d) EXCEPTIONS.—This section shall not apply with respect to depot-level maintenance and repair workload that is the subject of a public-private partnership entered into pursuant to section 2474(b) of this title provided—

“(1) competition is sought to select the source that will partner with the depot to perform the workload;

“(2) the payment requests made by the partnership for work performed reflect the full cost to the Government of resources used by the depot for providing services, which shall include costs of resources used, but not paid for, by the depot;

“(3) the portion of the payment received by the partnership that is necessary to cover the full cost of performance by the depot, as required by paragraph (2), is transferred to the General fund in the Treasury to the extent the payment is reimbursing the depot for federal resources the depot has used, but not paid for, in performing its work;

“(4) in accordance with applicable contracting procedures, the customer agency is not charged for any effort undertaken by the partnership to correct performance deficiencies; and

“(5) the depot does not charge its partner contractor for any effort the depot undertakes to correct performance deficiencies under the contract.”.

SEC. 323. EXCLUDE WORKLOADS FOR SPECIAL ACCESS PROGRAMS FROM LIMITATIONS ON THE PERFORMANCE OF DEPOT-LEVEL MAINTENANCE OF MATERIEL.

Section 2466(d) of title 10, United States Code, is amended to read as follows:

“(d) EXCEPTIONS.—Subsection (a) shall not apply with respect to—

“(1) the Sacramento Army Depot, Sacramento, California; and

“(2) workloads for special access programs.”.

SEC. 324. ESTABLISHING MINIMUM LEVEL OF PERFORMANCE OF DEPOT-LEVEL MAINTENANCE OF MATERIEL BY FEDERAL GOVERNMENT PERSONNEL OR AT A GOVERNMENT-OWNED FACILITY.

(a) ESTABLISHING MINIMUM LEVEL.—Section 2466(a) of title 10, United States Code, is amended to read as follows:

“(a) ALLOCATION OF WORKLOAD PERCENTAGE.—At least 50 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload shall be used for the performance of such workload for the military department or the Defense Agency by Federal Government personnel or at a Government-owned facility.”.

(b) CONFORMING AMENDMENT.—Section 2474(f)(1) of such title is amended by striking “percentage limitation” and inserting “allocation of workload percentage”.

SEC. 325. CENTERS OF INDUSTRIAL AND TECHNICAL EXCELLENCE: EXTENSION OF PARTNERSHIP EXEMPTION.

Section 2474(f)(1) of title 10, United States Code, is amended by striking “at” and inserting “for”.

**DIVISION B—MILITARY CONSTRUCTION
AUTHORIZATIONS**

SEC. 2001. SHORT TITLE.

This division may be cited as the “Military Construction Authorization Act for Fiscal Year 2004”.

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FISCAL YEAR 2004 NATIONAL DEFENSE AUTHORIZATION ACT—ENVIRONMENTAL LEGISLATIVE PROPOSALS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
READINESS SUBCOMMITTEE,

Washington, DC, Thursday, March 13, 2003.

The subcommittee met, pursuant to call, at 10:40 a.m., in room 2118, Rayburn House Office Building, Hon. Joel Hefley (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. JOEL HEFLEY, A REPRESENTATIVE FROM COLORADO, CHAIRMAN, READINESS SUBCOMMITTEE

Mr. HEFLEY. The subcommittee will come to order.

Today the Readiness Subcommittee will hear testimony from the Department of Defense, Federal and Environmental Agencies and interested stakeholders to consider their views on environmental legislative proposals submitted by the Department of Defense to the Committee on Armed Services last week. These proposals include amendments to the Endangered Species Act, the Marine Mammal Protection Act (MMPA), the Clean Air Act, the Comprehensive Environmental Restoration Compensation and Liability Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA).

The Department of Defense has taken the position that mandatory compliance with federal and environmental laws has an increasingly adverse impact on military readiness. This subcommittee agrees that many of our important environmental laws are being interpreted and applied in ways that are inconsistent with the original intent of the lawmakers who drafted and supported these laws, often to the detriment of the Department of Defense and the military services. This subcommittee held a hearing last year in which these issues were highlighted.

The focus of today's hearing is not to debate the issue of whether military readiness has been adversely impacted by compliance with environmental laws, including novel application and interpretation of environmental laws as applied to the Department of Defense and the military services. The Department of Defense and the military services have already made that case to the satisfaction of this subcommittee. Rather, the focus of today's hearing is to examine whether the proposals submitted to the subcommittee by the Department of Defense are appropriate and responsible solutions to what we consider to be a significant encroachment problem.

As was the case last year, there have already been reports in the media that the Department of Defense is proposing sweeping exemptions that will roll back decades of progress in environmental protection. This subcommittee is of the view that the Department of Defense and the services should be, and that they are, in fact, good stewards of the environment, due largely to the passage of environmental legislation over the past several decades, coupled with education and increased awareness of the public, government and industry at large over a similar period. However, we anticipate that we will hear opposing views from some of our witnesses today regarding the merits of the proposals of the Department of Defense.

This subcommittee will not take any action that will lead to the extinction of threatened or endangered species nor will it take any action that will have an adverse impact on our environmental natural resources such as uncontaminated ground water. However, this subcommittee is committed to finding viable, but responsible solutions that will provide the Department of Defense with the relief that is necessary to ensure that it is able to fulfill its mission due largely to our recognition that we should use our military installations and resources for the purposes for which they were originally created.

To that end, we will carefully consider all the views expressed during today's hearings as we strive to find a balance between the need to protect national security and our environment. We have two values here that are perceived to be competing values. I do not know that they have to be competing values. And we are going to try to address both of those values, hopefully in a responsible way.

At this time, I would like to recognize my good friend from Texas, the distinguished Ranking Member of the Readiness Subcommittee, the Honorable Solomon Ortiz, for any statement he may wish to make at this time.

STATEMENT OF HON. SOLOMON P. ORTIZ, A REPRESENTATIVE FROM TEXAS, RANKING MEMBER, READINESS SUBCOMMITTEE

Mr. ORTIZ. Thank you, Mr. Chairman and I see that we have a very distinguished group of witnesses before us, some of whom I have known. Mr. Arny, since I came to Congress 21 years ago.

You have not aged a bit. You look the same.

Mr. ARNY. You, too, sir.

Mr. ORTIZ. Mr. Chairman, I join you in welcoming all of our witnesses to this hearing today, The Readiness Subcommittee's first hearing of the 108th Congress. Their presence here today should help us better understand the issues associated with sustaining essential military force readiness while protecting the environment. I am also pleased that during this session we will receive the department's request in a timely manner and that we have a number of divested parties here to help us better understand the issues and potential consequences.

First, I want to thank our military personnel and dedicated civilian employees for their dedication and sacrifices, especially during this time when our nation is facing some doubting challenges.

With the exceedingly high OPTEMPO, all of the services' active components have experienced more deployments with fewer people.

The reserve components are busier than they have been since the end of the Korean conflict. Deployments are part of military life. And our military civilian personnel and their families are meeting the challenges associated with repeated deployments and often long family separations. I take this time to personally thank all of them for their sacrifices.

Mr. Chairman, there is no doubt that we need to train the way we intend to fight. Training realism has always been the best preparation for performance in combat. There is a lot that can be accomplished using simulations in some specific situations. On some occasions, I have heard some of my colleagues and others speak of the use of simulations as a cost-savings measure. Now, just because it appears to make good budget sense, does not mean it makes sense at the tip of the spear. I remember from my own military experiences that when you train with live ordinance you get the greatest degree of training realism. This is the real training that hopefully you never face in real combat. It gets the focus attention of everyone involved in the training and it helps to develop an understanding of the effects of munitions that you cannot get by using simulators.

Modern weapons and sensors allow for longer-range engagements, but also require more operating space to adequately test and train with those improved capabilities. For example, some years ago, the artillery and the Army division had a maximum range on the order of 10 to 15,000 meters. Today we are looking at being able to provide artillery support far in excess of that range. Ranges and impact areas at most of our military installations were designed for our military equipment technologies and tactics that date back to the 1950s. In some cases, training errors are even smaller than that required for training during World War II. I also understand that our newer aircraft engines provide much more power but are noisier than some of the older engines.

At the same time, outside pressures, increasing urbanization around installations, relocation of electric spectrum to commercial sectors and constraints on range land to support environmental conservation activities increasingly restrict space available for military readiness related activities. I am concerned, Mr. Chairman, that if something is not done, the tensions induced by the results of encroachment, along with the need of increasing operating space, will only worsen. We cannot stand idly by and do nothing. These tensions pose serious risk to military readiness given the military force readiness requirements of the evolving national strategy.

Whether this committee or some other subcommittee takes some action is not the issue. What is important is that this nation take the actions required to responsibly balance the competing needs between protecting the environment for the future and ensuring the ability adequately train our military forces. I am impressed with some of the discussions and actions being taken by divested parties to seek solutions that serve both the military and the environmental aims.

But, it thus requires energetic participation of all vested parties, not just a select few. And that includes state regulators who have a primary role to play in many aspects of the issues that have been raised in the legislation proposed by the Administration.

I am especially pleased with the actions of my City of Corpus Christi regarding potential encroachment and concerns. In this case, the city purchased land that will serve as a buffer between the military bases and the existing civilian community that ensures the unrestricted use of air space and land for military readiness activities.

I am also aware that the State of California enacted two separate statutes addressing these issues. Those two statutes, developed at the request of the United States Navy, offered the potential for the use as a model for other states and local communities attempting to address the encroachment challenge. In some instances, I have been informed that where there might be local or state government interest in doing something, funding is needed and funding that is not available in an already cash-limited state or local budget.

Again, Mr. Chairman, I welcome our witnesses today and look forward to the testimony and responses to our questions. And thank you, Mr. Chairman.

[The prepared statement of Mr. Ortiz can be found in the Appendix on page 53.]

Mr. HEFLEY. Thank you, Mr. Ortiz.

Mr. ABERCROMBIE. Mr. Chairman? Mr. Chairman, a point of inquiry.

Mr. HEFLEY. All right.

Mr. ABERCROMBIE. Of the chair. Mr. Chairman, for some of us on the committee, this is not the first time we are addressing this. I realize there are probably some new members on the committee and who—I am sure we will bring them up to speed, but, have all questions about jurisdiction been agreed to by the leadership or by the parliamentarian or so on—

Mr. HEFLEY. No.

Mr. ABERCROMBIE [continuing]. Not that we do not have jurisdiction in the sense that its being addressed in the committee. I believe we do. But, I also sit on the Resources Committee and I believe that changes in the Marine Mammal Protection Act, for example, or the Endangered Species Act, require hearings there. Is this a sequential referral? That is really my point of inquiry.

Mr. HEFLEY. It is a sequential referral, but we have not worked it out. Now, we are seeking information today and if we get to the point of actually doing something in legislation, well we will have to work out the—

Mr. ABERCROMBIE. Okay.

Mr. HEFLEY [continuing]. Sequence.

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman.

Mr. HEFLEY. Thank you. We received written testimony from a few outside organizations that are interested in these proceedings. And, unfortunately, due to time limitations, we are unable to include all of these organizations on our panels today. I request unanimous consent that we include their written statements in the record. Without objection, so ordered.

The way this is going to work today is that we have to—we have a little over an hour with two panels that we are going to have. Then we are going to recess from 12:00 to 1:00, come back at 1:00 for the final panel. And I would encourage all the members of the

committee to come back for the final panel as well as these, because I think that is a very important panel as well.

We have with us today a witness from the Office of the Secretary of Defense, a witness from each of the military services, a witness from three—or witnesses from three of the federal environmental enforcement agencies and witnesses representing the interest in stakeholders in the environmental community. We request that each of the witnesses summarize his or her testimony in five minutes, after which we will permit members of the subcommittee to ask questions. Due to the high number of witnesses and time constraints along with the availability of the hearing room, we will strictly observe the five-minute rule. And I would ask our members when you are asking questions, if you want to make a five-minute policy statement, that is fine, but do not expect to get an answer. Five minutes includes both the question and the answer. And the only reason for being hard-nosed about this is that we do have very strict time constraints today.

Our first panel is made up of the Honorable Raymond DuBois, Deputy Under Secretary of Defense for Installations and Environment; the Honorable Nelson F. Gibbs, Assistant Secretary of the Air Force for Installations, the Honorable Raymond J. Fatz, Deputy Assistant Secretary of the Army for Environment Safety and Occupational Health; and the Honorable Wayne Army, Deputy Assistant Secretary of the Navy for Installation and Facilities. And I would ask unanimous consent that each witness's entire statement be put in the record, and they can summarize in the five-minute time period. Without objection, so ordered.

Mr. DuBois, do you want to take off?

STATEMENT OF HON. RAYMOND F. DUBOIS, JR., DEPUTY UNDER SECRETARY OF DEFENSE FOR INSTALLATIONS AND ENVIRONMENT, DEPARTMENT OF DEFENSE

Secretary DuBOIS. Mr. Chairman, and Mr. Ortiz, distinguished members of the subcommittee and on behalf of the Secretary of Defense, I appreciate the opportunity to discuss with you again this year this very important topic. With your forbearance, Mr. Chairman, my colleagues at the witness table have yielded to me a couple of moments of their opening statement time, because in your letter of invitation to appear you asked some very specific questions that I think are worthy of at least some oral opening remarks on my part representing the entire Department. Is that all right, Mr. Chairman?

Mr. HEFLEY. Mr. DuBois, if you would try to summarize yours in five minutes, because there was also in the written testimony that was given us, some very good statements by the others. But, I think you will get plenty of time to expound when the question and answer time comes. And, by the way, I will say to these witnesses from the Department of Defense, we did not get your testimony until late yesterday evening. And it's very difficult for us to handle this in a meaningful way when it comes in at 7:00 or 8:00 at night the night before the hearing. And, I think in the future, I would say, and I do not—again, I do not want to be hard-nosed, but I would say that if you do want to testify and you want us to have a meaningful discussion of it, we do need you to follow those

limits on getting the testimony in so that we have time to process it properly.

Thank you very much.

Mr. DuBois.

Secretary DUBOIS. Mr. Chairman, as the Secretary of Defense has stated and as I have stated and my colleagues, our task in the Department and in the military departments in the services is to find that appropriate and necessary balance between the use of military lands, those lands set aside by Congress for the unique training purposes, unique underlined, training purposes of the military, and, obviously, also the obligation to protect our nation's environmental heritage. As we have discussed before, the expanding legal interpretations and regulatory restrictions on training and test ranges are limiting realistic preparations for combat. Last year, the Administration submitted eight provisions to the Congress. The Congress enacted three of those provisions. Two of them, in particular, the so-called affirmative land provision, allow us to cooperate more effectively with local and state governments, as well as private entities to expand open space surrounding our training ranges and to preserve training capability inside the fence line of our installations.

The third provision which Congress provided the department is a regulatory exemption under the Migratory Bird Treaty Act for the incidental taking of migratory birds during military readiness activities. We are grateful to the Congress for having adopted that provision. Now, the five remaining provisions, which are, let's face it, as important this year as they certainly were last year, are one, authorize the use of the integrated natural resource management plans as dictated by the Sikes Act in appropriate circumstances as a substitute for critical habitat designation.

Two, reform the obsolete and unscientific elements, in our view, of the Marine Mammal Protection Act, such as the definition of harassment and add a national security exemption, which does not exist currently in that statute. Three, modestly extend the allowable time for military readiness activities like the bed down of new weapons systems, in particular new aircraft, to comply with the Clean Air Act and not punish the states in the process.

Four, limit regulation of munitions' use on operational ranges under the Comprehensive Environmental Response Compensation and Liability Act, CERCLA, and the Resource Conservation and Recovery Act, RCRA, if and only if; and I must emphasize this because it has been mischaracterized repeatedly in the press and by some environmental organizations, if and only if those munitions and their associated constituents remain there, remain on the operational training range, and only if the range remains operational. This year's proposals do include some clarifications and modifications based on events since last year of the five; the Endangered Species Act (ESA) and the Clean Air Act Provisions are unchanged.

We can go into more detail on the RCRA and CERCLA and Marine Mammal Protection Act (MMPA), although I think, if you would sir, the MMPA proposal does include some new language from last year and I think it is important to note that first, like last year's provision, clarifying the term harassment is absolutely important. It currently focuses on the mere potential to injure or

disturb marine mammals. Second, this year's language in the MMPA will address new concerns resulting from a recent federal district court's ruling highlighting a number of deficiencies in the application of the Marine Mammal Protection Act to military readiness activities. And I think Mr. Army will address them from the Navy's point of view quite compellingly today.

Now, why are these proposals critical to our readiness mission? Clearly, there has been a loss of access to training and testing space. There has been increasingly unrealistic training options left up to our unit commanders. Three, there has been a disproportionate, in our view, compliance burden put on the Department of Defense. Our lands, the DOD lands, carry the conservation responsibilities for surrounding regions as in the proposed critical habitat designation under the ESA at Camp Pendleton.

Now, in closing, Mr. Chairman, in 1990, then Secretary of Defense Richard Cheney stated, and I quote, defense and the environment is not an either or proposition. To choose between them is impossible in this real world of serious defense threats and genuine environmental concerns. End quote. I believe that we can all agree with the now Vice President, Richard Cheney, that we do not necessarily, as you have indicated, Mr. Chairman, face a choice in conflict. Training is critical to victory. And protecting our environment is equally a critical obligation of the Department. And we will not sacrifice either.

Thank you very much, Mr. Chairman.

[The prepared statement of Secretary DuBois can be found in the Appendix on page 56.]

Mr. HEFLEY. Thank you very much.

Mr. Gibbs.

STATEMENT OF HON. NELSON F. GIBBS, ASSISTANT SECRETARY OF THE AIR FORCE FOR INSTALLATIONS, ENVIRONMENT & LOGISTICS, DEPARTMENT OF THE AIR FORCE

Secretary GIBBS. Thank you, Mr. Chairman, Mr. Ortiz, distinguished Members. I am pleased to be here today representing the Air Force to talk about the initiatives relative to the range preservation issues. I too, like you, Congressman Hefley, have been somewhat overcome by reading the press in recent days regarding the comments, particularly of an editorial nature.

And I would say I suffer under the burden of having read the proposed legislation; and, therefore, I am somewhat confused. My reading of the proposed legislation is that the Department of Defense is not asking for blanket exemptions of anything. It is not asking for exemptions from anything in this regard. It basically is asking in several instances for clarification of the legislation, which has previously passed the House, particularly the relationship of the Sikes Acts to the RCRA and CERCLA Acts and also in relationship to processes that have been developed in relation to the integrated natural reserve management plans that have proved very effective, where the various military departments have worked directly with the Department of Interior.

In the case of the Air Force, over the last 10 years we have prepared close to 100 integrated management resource plans, substantiate all of which we have come into agreement with the Depart-

ment of Defense as to how we are managing those particular properties. The Air Force takes it very seriously. Each one of those plans is reviewed annually. And on a five-year cycle, all of them have to be rewritten.

The Air Force is a very good guardian of our natural resources. And we believe that, as Mr. DuBois said, it is not a case of competing. It is a case of working together rationally to ensure that we get the best of both.

Thank you very much.

[The prepared statement of Secretary Gibbs can be found in the Appendix on page 75.]

Mr. HEFLEY. Thank you very much.

Mr. Fatz.

STATEMENT OF HON. RAYMOND J. FATZ, DEPUTY ASSISTANT SECRETARY OF THE ARMY (ENVIRONMENT, SAFETY AND OCCUPATIONAL HEALTH) DEPARTMENT OF THE ARMY

Secretary FATZ. Mr. Chairman, and members of the committee, I appreciate this opportunity to present the Army's views on the need for the readiness and range preservation initiative. I want to thank this committee for its continued interest and leadership in this important subject for DOD and the Army. The remote forts of yesterday, which blazed a trail for exploration and settlement, have today become victims of their success, magnets to off post development that now imperils the very purposes for which the forts were established.

Our own advances in technology and equipment have tested the boundaries of our installations to such a degree that training that once took place on a few hundred acres now requires hundreds of square miles. We must train as we expect to fight, with the best equipment and the most realistic training that we can provide. Our sons and daughters deserve no less. As the parent of a forward deployed combat engineer, I expect no less.

I would like to spend a few moments talking about three of our legislative proposals, the RCRA and CERCLA proposals and the Endangered Species Act (ESA) proposal. In 1992, Congress passed and the President signed the Federal Facilities Compliance Act. A key component of that legislation was the mandate for EPA to define when military munitions become subject to RCRA regulation as a hazardous waste. DOD worked closely with EPA and a host of interested people from the public, industry, states, and other federal agencies. The final military munitions rule was effective in August 1997. That effort left unresolved the status of munitions once they have been on the range for some indeterminate period of time, an issue that directly affects our operational ranges. In fact, the Army is currently defending a lawsuit at Fort Richardson, Alaska, in which the plaintiffs alleged violation of state hazardous waste regulations. Our proposal simply says that munitions are not waste while on an operational range. It also makes clear that existing state and federal authorities to address imminent and substantial harm to the health of the environment on or off an operational range, are unchanged, as are any legal requirements associated with areas that are no longer operational ranges.

We have also proposed to modify the definition of release under the CERCLA to exclude the firing of munitions in the normal course of training on an operational range. This is not so radical a concept as it might seem on the surface. The definition already has four exemptions, workplace exposures, engine exhaust, releases involving certain nuclear materials, and most notable, normal application of fertilizer. Because release is the trigger for CERCLA requirements, the fundamental question is whether the use of munitions on an operational range as intended should result in a release. We do not believe this was the intent of the law.

The lawsuit involving Fort Richardson raises this specific issue. If our firing activities constitute a release, CERCLA requires reporting, investigation and response. An adverse ruling on any point would dramatically impact the ability of the Army's largest infantry brigade to train in Alaska and could affect our operational ranges nationwide. The exclusion is not a free pass. EPA still has the full authority under CERCLA, Section 106, to take action to address an imminent and substantial endangerment to health or the environment caused by munitions' use on an operational range.

I understand there are concerns over how this proposal relates to the situation at the Massachusetts Military Reservation. I can assure you the Army considered these very same concerns as we developed this legislation. And we have carefully crafted a legislative proposal that fully preserves the authority of EPA to address situations that pose an imminent threat and substantial endangerment to the health or the environment.

With respect to the Endangered Species Act proposal, we are required under the Sikes Act to develop, in consultation with the U.S. Fish and Wildlife Service and state wildlife management agencies an integrated natural resource management plan. The plan integrates natural resource management, including habitat for endangered species, with use of those lands for military training. We have worked closely with the Fish and Wildlife Service to ensure that our plan provides sufficient management controls to make critical habitat designation unnecessary. We believe this approach provides the necessary protections for the listed species while accommodating the military mission.

However, this practice is being challenged in court and the Fish and Wildlife Service is under increasing litigation pressure to designate even more.

Finally, I would like to comment on the authority Congress granted us earlier this year to acquire buffer zones around our installations. Fort Carson, Colorado, has moved out and implemented one of our first agreements under the new legislation with the Nature Conservancy. We are excited about the prospects this affords and will continue to identify suitable properties to implement the program fully. This legislative package contains five proposals that the Army feels are necessary to stem the tide of unwarranted and unintended expansion of environmental laws to areas critical to our military mission.

We welcome this opportunity to articulate our needs and explain the importance of these narrowing targeted provisions. Thank you for continued interest and support.

[The prepared statement of Secretary Fatz can be found in the Appendix on page 83.]

Mr. HEFLEY. Thank you.

Mr. ARNY.

STATEMENT OF HON. WAYNE ARNY, DEPUTY ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND FACILITIES) DEPARTMENT OF THE NAVY

Secretary ARNY. Yes, sir. Thank you, Mr. Chairman, Mr. Ortiz, members of the committee. It is a pleasure to be here. Let me start by saying that not only am I representing the Navy Department on environmental issues today, but I am also a former Navy fighter pilot who flew combat missions in Vietnam. I can tell you firsthand how important the realistic training is to success in that most demanding environment. My two sons are also Naval aviators who have flown combat missions in F-14's. They, too, will tell you that time and technology has not diminished the need for realistic training with live ordnance.

Some will say that simulators diminish or eliminate the need for realistic live training. Simulators are much better today than they were in my day, much better. And the technology keeps improving. But, it is still a very different realism: Flying over enemy territory for the first time, preparing to deliver live ordinance accurately on an assigned target, and then trying to get back in one piece so you can go back out and do it again.

I am here today representing our sailors and Marines to present our legislative proposals included in DOD's Readiness and Range Preservation Initiative. We believe these provisions are critical to ensuring future military readiness. Some courts are jeopardizing readiness by the rigid application of environmental statutes to military tasks. We have found that some of these statutes do not require, and, in fact, do not even allow consideration of the unique needs of military training.

The Department of the Navy has a stake in legislative flexibility for all five statutes, but the Marine Mammal Protection Act and the Endangered Species Act are of special importance to us. And I will discuss those alone.

The Endangered Species Act current law mandates that DOD and only DOD prepare integrated natural resources management plans, or INRMP's as we call them, that require the balance military training and environmental conservation needs. I emphasize that these are integrated plans that consider the needs of endangered species, along with a host of other conservation requirements. We work very closely with the Fish and Wildlife service to prepare these INRMP's and we subject them to the National Environmental Policy Act (NEPA) process. In fact, Fish and Wildlife agrees with us that these plans can provide the special management attention necessary for endangered species at our bases without the need for designating critical habitat. That is very important because once an area is designated critical habitat, there is no longer an ability to balance military training needs with conservation needs. Species recovery becomes the overriding priority for the use of our land instead of the military training mission for which it was entrusted to us.

We prepared INRMP's for both Marine Corps Air Station Miramar and Camp Pendleton, but special interest groups challenged Fish and Wildlife in court and the services had to withdraw their final rules. They are required to issue revised draft rules again next month. What is at risk? Is 65 percent of the land at Miramar and 56 percent at Camp Pendleton being declared critical habitat, in many cases where there is no existing species? If that happens the primary mission for most of the land at both bases would become species recovery for the shrimp the California coastal gnatcatcher and the royal toad, not training young Marines to defend our national interest.

DOD's proposed change will give us the flexibility to continue to train while continuing to also protect endangered species. We have a similar situation with regard to the Marine Mammal Protection Act and the Navy's effort to develop and deploy a new, low frequency active sonar system called SURTASS-LFA. This system is crucial to more easily detect and track enemy diesel power submarines, something we have not been able to do well over the past decades. The Navy worked closely with the National Marine Fishery Services, NMFS, the federal agency responsible for the protection of the marine mammals. A large scale and expensive scientific study, reviewed by an independent panel of scientists concluded that with some mitigation that the Navy endorsed, the new sonar would have minimal impact on marine mammals. After six years of analysis by both agencies, NMFS issued the Navy a permit.

Nonetheless, a legal challenge ensued and the court issued a preliminary injunction restricting the Navy's use of the system. My written statement provides additional details on these and other examples, but the common theme is that these statutes, most written many years ago, have a singular focus that neither provides for nor even recognizes military training needs. But, we are not alone in our request. As you will see in the case of MMPA, our request to better define certain vaguely interpreted legal terms is supported fully by other federal agencies like NMFS and the Department of Interior and by the scientific community like the National Research Council.

DOD's proposal will focus analysis on biologically significant impacts, allow better application of MMPA to worldwide Navy and provide an exemption for those rare occasions when timely compliance with MMPA is necessarily military. We in the department recognize the importance of natural research conservation and over the years we have proven that. Nothing in our proposal will change other environmental requirements or activities for both we and America—that both we and American corporations perform.

We are merely trying to restore balance where environmental requirements adversely affect unique military activities unnecessarily.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Army can be found in the Appendix on page 99.]

Mr. HEFLEY. Thank you very much.

I am not going to ask you right now because of the time pressure, but I would like for each of you to think and let us know later in the best of all possible worlds, from your standpoint, you would

like all of this package enacted. But, if it cannot all be enacted, I would like for each of you to prioritize it so that we get an idea of what is the most important from your different perspectives.

What we will do now is do questions from our Members until 11:30 when we will have to end this panel and go to the next panel. Then we will pick up where we left off with the questioning with the next panel. So, we hope everybody gets an opportunity. I do not know, under the pressure of time, we will do the best we can.

Mr. Ortiz.

Mr. ORTIZ. Mr. Chairman, I am going to pass to allow some of the other Members to ask a question and I will submit most of my questions for the record. I know that we are limited on time. So—

Mr. HEFLEY. Mr. Hostettler.

Mr. HOSTETTLER. Thank you, Mr. Chairman.

Mr. DuBois, I have a question for you. As you may be aware, a study is underway to study the suitability and feasibility of designating a majority of Vandenberg Air Force Base lands as a unit of the national park system. Do you believe that the inclusion of land on an active military installation for possible inclusion within a national park is a good idea?

Secretary DUBOIS. I am sorry. Do I believe that the inclusion—

Mr. HOSTETTLER. The inclusion of military installation as a national park is a good idea?

Secretary DUBOIS. I will defer to Mr. Gibbs on that as it is an Air Force base.

Secretary GIBBS. There is a portion of Vandenberg that is being considered for inclusion in that. We are participating in discussions about that. We believe that there are some problems related to its use, both by the military and also by civilians in making use of the national park. But, it has not matured to a point for us to be able to have a conclusion on it. It is going to take some time.

Mr. HOSTETTLER. In your study have you—has there been much discussion on the potential decision of it being included in the national park system and its impact on testing and deployment of a national missile defense system?

Secretary GIBBS. Yes. That's the part that I really was referring to when I talked about the impact that it would have on the military mission. We have not concluded in its entirety what that—what we expect that would be. But, we do continue in discussions to see if we could work out some of those problems. But, we are not there yet.

Mr. HOSTETTLER. Do you know about when, the way the discussions are going, do you know approximately when? I think we are talking about potentially deploying interceptors there in 2005. Do you know—is that—

Secretary GIBBS. At Vandenberg?

Mr. HOSTETTLER. Yes. And potential targets.

Secretary GIBBS. For the ballistic missile defense?

Mr. HOSTETTLER. Yes, I am sorry.

Secretary GIBBS. I have not looked at it from that perspective. It is in the very early stages, Mr. Congressman. And, believe me, if we begin to have real problems and difficulties with that, we certainly will come and talk with you.

Mr. HOSTETTLER. Very good.

Secretary GIBBS. As a policy issue, Congressman, the Defense Department, I can assure you, will not yield up land that has a direct impact in military operational readiness.

Mr. HOSTETTLER. Very good. Very good.

Mr. Fatz, is that the proper pronunciation?

Secretary FATZ. Yes.

Mr. HOSTETTLER. Thank you. I had a question about some of your testimony here and just for my information, the red-cockaded woodpecker in the southeast United States, a good example of successful conservation without critical habitat designation. However, during the early 90s, the RCW, the Red-Cockaded Woodpecker, presented significant restrictions to Army training, included no use of camouflage in that area. What does that mean, no use of camouflage in a 200-foot buffer around the cluster of cavity trees?

Secretary FATZ. The restrictions on our training included a number of restrictions, not being able to drive close to the trees, the cavity trees, not being able to fire large and small arms ammunition, not being able to use the camouflage netting that is critical in our training.

Mr. HOSTETTLER. What would that have done? Why could you not use camouflage netting?

Secretary FATZ. The birds getting caught in the net.

Mr. HOSTETTLER. All right. I have other questions for the record. But, I at this time, yield back the balance of my time.

Thank you.

Mr. HEFLEY. Thank you.

Mr. Taylor.

Mr. TAYLOR. Mr. DuBois, I am in agreement with what you are asking for. I think we need to take a look at some of the environmental rules. But, I also ask you in your capacity, this is the Deputy Secretary of Military Installations, to take a second look at this. I will use an analogy at Camp Shelby in Mississippi where, as a nation, we have invested about 30 million for a tank training range and they want to have a combined maneuver area. About 100,000 acres of that is in a national forest; so, therefore, anything they do has to be signed off by the national forest. Again, they understand the rules and they can live by the rules.

What has complicated matters is that they will occasionally come across areas of wetlands. And, in order to have the maneuver area, will have to construct wetlands crossings. Under the DOD rules, MILCON is for \$750,000 or more. Under that they can use operation and maintenance funds. But, I am told there is also a DOD rule where if you lump several similar projects, that the base facility's manager can actually get in trouble if he constructed, say, five wetlands crossings and the combined count for that went over 750,000. Then he has to come back for an appropriation, which holds things up for, as we know, at least a year.

What I am asking you in your capacity to do and, again, this may be one more way of solving some of these problems, is if we could provide the bases with some language, a law change, that would allow them the flexibility to use O&M funds to respond to these needs when working with the other different government agencies so that they accomplish their military tasks, they do it

within the law, and the base installations manager does not go to jail for spending more than \$750,000 as he tries to abide by the environmental laws.

I have some proposed language that has been sent up to me by the Mississippi National Guard. And, again, wetlands is our problem, but it is certainly not unique to Mississippi. In some other place it may be another species, but I do think this is going very much to what the vice president said in trying to take care of the environment and provide for the national defense with a fairly simple change to the law. I would certainly welcome your thoughts on this. And I would certainly welcome your support to do this in your capacity with the installations.

Secretary DUBOIS. Mr. Taylor, I would certainly review carefully language in that regard. You have correctly stated that there is a \$750,000 limit over which we need to get authorization and appropriation for MILCON. There is actually another clause that states we can go up to 1.5 million if there are health and safety implications to the project at hand. We have—we are very mindful of the prerogatives of both the authorizers and the appropriators in terms of military construction and have been reminded of this from time to time in terms of the use of O&M dollars. If your language is acceptable to this committee, I am sure that we will be able to see the way to appropriately comment in that regard.

Mr. TAYLOR. Well, could you live with the change, then, that would say health safety or environmental since there is already that statute on the books; I would think that that would be a fairly easy change?

Secretary DUBOIS. I could see that that would merit an acceptance on our part. Obviously, there are issues here between your committee and the appropriators in that regard.

Mr. TAYLOR. Who on your staff should I approach with that?

Secretary DUBOIS. I will take it myself and work with the comptroller in that regard and see—you send me the language and we will certainly respond to you.

Mr. TAYLOR. Okay. Thank you. A 45-day timeframe? Because, I think our mark-up is scheduled sometime around Memorial Day?

Secretary DUBOIS. Yes, before your mark-up.

Mr. TAYLOR. Thank you, sir.

Secretary DUBOIS. I commit to responding before your mark-up.

Mr. TAYLOR. Thank you very much.

Mr. HEFLEY. Mr. Hayes?

Mr. HAYES. Thank you, Mr. Chairman.

Gentlemen, thank you for being here.

Mr. ARNY. What is your opinion? My opinion, we have compromised our training and readiness because of radical environmental regulations, laws, movements and all that stuff. And our number one endangered species, as far as I am concerned, is any person in uniform whom we are asking to go into combat. What is your opinion on how much is compromised or has happened because some of these regulations?

Secretary ARNY. Sir, my opinion is that we are compromising. And I think the classic example is the SURTASS-LFA. I joined the Navy in 1960; and although I was a fighter pilot, when I was in policy positions anti-submarine got into Warfare ASW and those

sorts of things. And one of the toughest targets that our ASW fighters always had was to deal with submarine operating on battery. Once we went off battery and started snorkel, then he became a big target.

But, if you are off the coast of a country with—and we have seen in Afghanistan how important the carrier force was to get into those—I mean, we never did strikes the length that we did in Afghanistan, that we have done in Afghanistan, or we did in Vietnam. In talking to my sons, it was just unbelievable tanking into—you needed that carrier force there, but you need to be as close to the coast as possible.

And that is where you are going to find diesel submarines—in shallow water—and we did not have a good way to get them when they were on battery. With a low-frequency active sonar, you finally had a chance to get them. It took us six years of analysis. We had agreement with federal agencies. We are not trying to shirk our responsibilities when it comes to protecting endangered species.

As you have seen on many of our bases, endangered species on those bases are actually thriving. But, in the case of the marine mammals, we have been working doing research to try and avoid that. And, like I said, get agreement with other agencies, but then it is shot down because of the way these inexact terms are being interpreted in the courts.

And if we get these changes, we believe that—and, again, other agencies and scientific groups join us, we believe that we can continue to train and operate effectively.

Mr. HAYES. I would ask you to let us know anyway we can help you. There are many responsible environmental groups that have goals that we all share. And we want to work with those folks, as opposed to some of the others.

Mr. Fatz, my friend, Mr. Hostettler, has raised attention about our little woodpecker friend down at Fort Bragg in North Carolina. Now, let me point out, as Mr. Arny did, that we have done a heck of a lot of work with encroachment and providing habitat and that little fella has a lot better chance at Fort Bragg than he does in downtown Washington. So the environment stewardship of our folks there and across the board in the military has been very, very good.

Comment for me, if you will, on the idea of the relationship between some of our major responsible organizations, conservation folks, working with us at Bragg and other locations to provide additional habitat force protection and do good things for everybody involved if you are familiar with what is going on. I think some of the folks in the audience and up here would be interested in that. You are doing a good job.

Secretary FATZ. We just entered into an agreement with Fort Carson following the Fort Bragg model with the Nature Conservancy where now at Fort Carson we have added, through a cooperative agreement with the nature conservancy, 30,000 acres for a buffer zone and 14 linear miles along the southern border of Fort Carson. And that will benefit our multi-range firing positions that we have there, and also the Air National Guard F-16 Fighter Wing. That model that we built out of Fort Bragg we are looking at that in addition to Carson at other sites; we are prioritizing now

and we hope to have a number more of those. And we are finding quite a bit of cooperation from these other outside federal agencies.

Mr. HAYES. Thank you, sir. Tremendous cooperation, great results. I just want to be sure and point that out because there are many responsible groups that we enjoy working with productively.

Mr. Chairman, I yield back the balance of my time.

Thank you all for the good things that you are doing to protect our soldiers and sailors and airmen and Marines first.

Mr. HEFLEY. Thank you.

Mr. Rodriguez.

Mr. RODRIGUEZ. Thank you, Mr. Chairman.

Let me, first of all, thank all of you for being here with us, and a special thanks to Secretary Gibbs. Thank you very much for meeting with my constituency. They came back. I want to thank you for your frankness and straightforwardness on that meeting. And I personally appreciate that.

And this question for anyone on the panel, because my city and my community went through a BRAC closure and millions of dollars have been expended now on the process of trying to clean up the whole thing. And, as we look in terms of another BRAC, it to me just makes sense that maybe we take some preventative kind of things that we ought to be doing, you know, because as I look in terms of what happened at Kelly, a lot of it was just fuel leak and it maybe could have been taken care of if we had some measures in advanced. So, I am wondering if we are doing anything to prepare ourselves as we look at this next round of BRAC and just also look in terms of being a little better stewards of the property that we have.

And I understand in some areas we cannot because of what we do. But, in others, I think that there are some preventative kind of things that we could be doing and I want to ask for anybody that would want to comment on that.

Secretary DUBOIS. Yes, Mr. Rodriguez, setting aside for the moment the BRAC process and the potential BRAC product, if you will, in 2005, the Department believes very clearly and their evidence shows that pollution prevention is far cheaper than pollution clean-up. To that end, there is a significant amount of money in this year's budget focused on pollution prevention. We are digging out tanks from the ground to prevent future leakage and seepage. Each of the services has an active program in this regard.

Mr. RODRIGUEZ. Do you know how extensive it is in terms of the resources and not necessarily yourself, but just across? Do we need to put more resources in that area?

Secretary DUBOIS. I would defer to the services on that.

Secretary GIBBS. As far as the Air Force goes, in all of our military construction, and particularly when we are talking about industrial type areas, that is just a component that is built into to how we do things now. One specifically, we are doing a paint booth down at Warner-Robins. I cannot tell you how much the cost is for that as related to the environmental aspects of it. It is fairly significant. But, it is just built in. And we do that as a matter of course today.

We, along with the industry have learned a lot about the things that we did not do right 20 and 30 years ago. And we do not do

things wrong anymore. Case in point, that you are probably familiar with, even though it is at a closed location, down in San Antonio, a number of the activities were still left there and are now being done by commercial companies. And in there it has one of the best double-walled reclamation for solvents facilities I have ever seen.

Mr. RODRIGUEZ. Thank you.

Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you very much. I want to thank this panel. We will be working very closely with you as this proceeds. And we do have additional questions that we will get to you and we would like for you to get your responses back as quickly as you can.

See what this is.

If the next panel will take their places as quickly as possible, we will get started on that.

Our next panel is made up of Mr. Peter Suarez, Assistant Administrator, Office of Enforcement and Compliance Assurance for the U.S. Environmental Protection Agency; Ms. Julie MacDonald, Special Assistant to the Assistant Administrator for Fish and Wildlife and Parks, U.S. Department of Interior; and Dr. William T. Hogarth, Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration. I do not know if you were here before. We are going to go with the five-minute rule; and if you will keep your statements to five minutes, your entire statement will be put into the record.

Mr. Suarez.

STATEMENT OF MR. JOHN PETER SUAREZ, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. SUAREZ. Suarez.

Mr. HEFLEY. Suarez?

Mr. SUAREZ. Yes.

Mr. HEFLEY. All right.

Mr. SUAREZ. Thank you, Mr. Chairman, Congressman Ortiz, and members of the subcommittee. Again, thank you for inviting me to speak with you today on behalf of Governor Whitman and the Environmental Protection Agency about the Administration's proposed National Defense Authorization Act of fiscal year 2004. We believe at EPA that the proposed bill appropriately addresses two equally compelling national priorities, military readiness and the protection of human health and the environment. These priorities are not at odds and we appreciate the Defense Department's willingness to work with us to craft the proposals before you today.

As you know, the proposed bill would make changes to certain pollution control laws that EPA administers and I will be confining my remarks today to those particular laws. Both EPA and the Department of Defense share important missions, protection of our national and environmental security. One holds little value without the other. Neither mission should be sacrificed at the expense of the other.

Toward that end, EPA and DOD have for years worked cooperatively towards achieving these goals with tangible benefits to both the military and the public. The bill before the subcommittee is the

result of just such collaboration. Together, our two agencies resolved key issues in a way that allows the services to continue to train the way they fight while protecting the health of our citizens and safeguarding our natural resources.

I would like to highlight for you just a few of those provisions today. First, EPA recognizes that military readiness depends on DOD's ability to move assets and material around the nation, perhaps on short notice. Such large scale movements of people and machines may have impacts on state implementation plans, or SIP's, for air quality.

Accordingly, EPA and DOD developed proposed changes to the Clean Air Act's State Implementation Plan provisions to allow the military to engage in such activities while working towards ensuring that its actions are consistent with the plan for air quality standards. Under the proposed bill, the military would still be obligated to quantify and report on its impacts on air quality, but would be given three years to ensure that its actions are consistent with the given state's air quality plan.

Second, the Administration's bill proposes two changes to the Resource Conservation and Recovery Act, or RCRA, the nation's solid and hazardous waste law. First, the bill contains language that would change the statutory definition of solid waste under RCRA to provide flexibility for DOD regarding the firing of munitions on operational ranges while clarifying that definitional exemptions are not applicable once the range ceases to be operational. This change is compatible with the existing policy at EPA and the military munitions rule that has defined EPA's oversight of fired munitions at operational ranges since 1997.

The bill specifically maintains the ability of EPA, the states, and citizens to take actions against the military in the event that munitions or their constituents migrate off range and may pose an imminent and substantial endangerment for public health or the environment.

The agencies also worked together to craft a clear, common sense definition of range. Under the revised definitions of both solid waste and range, the military will have statutory assurance that EPA will not intervene in the firing of training munitions while the public may rest assured in the knowledge that EPA, states, and citizens have the authority to take action if munitions pose a threat off range or after a range is closed.

We note for the record, that in its history, EPA has in only one instance taken an enforcement action that resulted in the cessation of live fire training at a military base, namely at the Massachusetts Military Reservation, MMR, on Cape Cod. There, EPA took action only after determining that the ground water aquifer underlying MMR, the sole source of drinking water for hundreds of thousands of Cape Cod residents, was threatened with contamination and only after efforts at a voluntary action failed to stop the spread of contamination.

Third, and finally, the Administration's bill proposing analogous changes to the CERCLA, also known as the super fund law. It would exempt from the definition of release under CERCLA explosives and munitions deposited during normal use while on an operational range. It is important to note that under the proposed bill,

EPA would retain authority to take action to abate an imminent and substantial endangerment to public health and the environment due to the deposit or presence of explosions ammunitions on an operational range while still affording the military the flexibility they need in handling munitions at these ranges.

In conclusion, we believe that the Administration's bill accommodates the concerns of both the military, the EPA and the public. I am confident that DOD and EPA can work together within the framework of the proposed law to ensure that America's armed forces are able to train, to carry out the national security mission at the agency and that our agency is able to carry out its mission of protecting public health and the environment.

That concludes my remarks. And I thank you for the time.

[The prepared statement of Mr. Suarez can be found in the Appendix on page 106.]

Mr. HEFLEY. Thank you very much.

Ms. MacDonald.

STATEMENT OF JULIE MACDONALD, SPECIAL ASSISTANT TO THE ASSISTANT ADMINISTRATOR FOR FISH, WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Ms. MACDONALD. Good morning, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to testify on the role of the Department of the Interior on this important subject. Secretary Norton and Assistant Secretary Manson understand the unique nature of the duties and the missions of the military and the need to train effectively for military missions.

This is particularly true for Assistant Secretary Manson, who is an Air Force Academy graduate and a colonel in the Air National Guard. He is in Florida today for the Centennial of the National Wildlife Refuge System, and he is unable to testify.

The Fish and Wildlife Service has actively sought to work with the Department of Defense to achieve a balance between meeting the requirements of our various natural resource laws without affecting the military's ability to train. I would like to focus my testimony on the proposals set forth by the Department of Defense with regard to the Endangered Species Act and the creation of natural resource management plans, or INRMP's.

At least 300 species occur on the Department of Defense managed land; and access limitation due to increased security, the necessity for buffer zones, and good military stewardship has resulted in some of the finest remaining habitat occurring on military lands. The Endangered Species Act requires the Fish and Wildlife Service to designate critical habitat for listed species if it is prudent and determinable. We recognize that critical habitat designations on Department of Defense lands can impact the ability of the military to prepare and to train.

Integrated natural resource management plans, known as INRMPs, serve as an effective vehicle through which the Department of Defense can comprehensively plan for conservation of fish and wildlife species. This planning can also address important needs for endangered and other species of fish and wildlife, including the protection of habitat.

The Department of Interior's policy is to exclude military facilities from critical habitat designation if the facility has an approved INRMP which addresses the species in question. We support the efforts of the Administration to codify this policy in the Range Readiness and Preservation Initiative. The ability of the Department of the Interior to exclude areas covered by an INRMP has allowed us to address a number of Department of Defense concerns over critical habitat designations since your last hearing on this issue.

For example, critical habitat proposed for the purple amole, a plant in California, included significant portions of Camp Roberts and Fort Hunter-Leggett. We excluded Camp Roberts from the final designation because it had a completed INRMP, which addressed the conservation of this plant. Working with the Department of Defense, we were able to also remove Fort Hunter-Liggett from the designation although the INRMP to address the protection of the plant was not approved.

The Department of Defense was able to provide us with detailed information on the impacts of the proposed designation on our military readiness activities. The benefits of those military readiness activities to our national defense exceeded the benefit of including the area in the designation; and we, therefore, excluded the property.

I have included additional testimony—examples of the excellent cooperation between the Fish and Wildlife Service and the Department of Defense in my written testimony. However, a recent court case in the district of Arizona has cast doubts on our ability to continue to exclude military lands from critical habitat based on the INRMP, which addresses the needs of the species in question.

The Fish and Wildlife Service excluded lands covered by a national forest management plan and critical habitat proposed for the Mexican Spotted Owl. The court ruled that the Fish and Wildlife Service could not exclude lands from critical habitat designations based on the existence of a management plan. We felt it was important to advise the committee of the decision and the cloud it cast over our continued ability to exclude military lands with approved INRMP's from critical habitat. The decision adds additional weight to the Administration's proposal for statutory exclusion.

Codifying the Department of Interior's policy on excluding military lands from critical habitat based on an INRMP would likely reduce future litigation and challenges and provide more certainty to the Department of Defense that their lands will continue to be excluded from designation if they have an approved INRMP which provides for the conservation of the species of concern.

In closing, Mr. Chairman, I believe both the Interior Department and the Department of Defense have acted cooperatively to implement the natural resource conservation laws passed by Congress. We are well aware of the challenges that have arisen during this endeavor. The Interior Department is prepared to explore and craft creative solutions to balance our conservation mandates with military readiness. We look forward to continue working with the Department of Defense on this vitally important matter.

This concludes my testimony. I appreciate the opportunity to appear today and would be pleased to answer any questions you have.

[The prepared statement of Ms. MacDonald can be found in the Appendix on page 112.]

Mr. HEFLEY. Thank you very much.

We will have to stand in recess until such time as I can get back from this vote and it should not be more than about 15 minutes.

[Recess.]

Mr. HEFLEY. The committee will come back to order and I apologize to our panel for the interruptions, but that is the way our life goes. Our life is not our own when those bells go off.

Dr. Hogarth, we will start with you.

STATEMENT OF DR. WILLIAM T. HOGARTH, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Dr. HOGARTH. Okay. Thank you, Mr. Chairman. I am glad to be here today to testimony regarding the 2004 Department of Defense Readiness and Range Preservation Initiatives. I appreciate the opportunity to address the issues of environmental protection in the context of military operations and readiness.

NOAA Fisheries is responsible for the conservation and management of 147 marine mammal stocks under the Marine Mammal Protection Act. Working closely with our federal partners, including the Department of Interior, the Marine Mammal Commission and the Department of Defense, I am happy to announce that we were able to develop by the Administration the MMPA reauthorization bill that was transmitted to Congress in February.

Over the last few years, NOAA has been working more closely with our federal partners at DOD, particularly the Navy, due to our shared responsibility for the oceans. We have developed a productive working relationship. NOAA fisheries and the Navy have undertaken a number of efforts to improve coordination between the two agencies, including research coordination and strategic planning opportunities. The discussions have focused on the integration of agency processes under the ESA and the MMPA, as well as concerns raised by the military in achieving its mission responsibilities.

As requested, I am here today to provide comments on the 2004 bill. This bill contains a number of provisions that are relevant to NOAA fisheries. The RRPI would make amendments to the Marine Mammal Protection Act specifically for military readiness activities. The proposed amendments focus on three areas of the MMPA, the harassment definition, the incidental take authorization language and national defense exemptions to the bill.

First the RRPI includes a change to the definition of harassment. The proposed definition is the same as the one contained in the Administration's proposed MMPA amendments. However, the RRPI definition only applies to military readiness activities in this bill rather than to all regulated activities. Also included in the bill are a group of changes to the current legislative requirements that govern applications for incidental take permits. Incidental takes are those that are intentional, but not unexpected and occur during otherwise lawful activities.

Under the MMPA and current regulations, NOAA fisheries can authorize the takes of small numbers of marine mammals if the takings would not have more than a negligible impact on those marine mammals species or stocks and will not have an unmitigable adverse impact on substance of these species. There are a couple of important points to note when evaluating the impact of these proposed DOD amendments on NOAA's trust resources.

First, DOD will still have to show that these activities are having a negligible impact on marine mammal species and populations. Additionally, DOD will have to demonstrate that its activities will not have unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses pursuant to the MMPA.

NOAA will continue to base its decisions regarding DOD permit applications on the biological significance of the impacts that the DOD actions may have.

Second, military readiness activities small take authorizations will have to abide by the Endangered Species Act, the National Environmental Policy Act and the administrative procedures requirements where they apply.

Finally, the RRPI also contains an exemption which calls for actions necessary for national defense. These exemptions may be granted by the Secretary of Defense after consulting with the Secretaries of Commerce and the Interior and can last for two years. This exemption is similar to the one found in the Endangered Species Act already.

In conclusion, we support the 2004 Department of Defense Readiness and Range Preservation Initiative. I am confident that DOD and NOAA can work together within the framework of the proposed law to ensure that the American armed forces are able to train to carry out their national security mission while my agency is able to carry out its marine conservations responsibilities. NOAA will also continue to work with the Navy and the rest of the Department of Defense to improve coordination between our programs. We look forward to continuing our partnership.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity. I will answer any questions you may have.

[The prepared statement of Dr. Hogarth can be found in the Appendix on page 126.]

Mr. HEFLEY. Thank you very much, to all of you. It is very excellent testimony.

Ms. Davis.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman.

Thank you, all of you for being here. Sorry for all the interruptions, we just have to live with it. I wanted, Mr. Chairman, to just thank you for including the third panel today, because last time when we looked at this issue we did not have that opportunity and I think it is important.

I think it is also important that we hear from all the stakeholders. I believe that the State Attorney General, the state regulatory agencies and national and local environment groups all have a valid perspective on the issue. And they really do need to be heard as well so that we can evaluate all these issues.

I wanted, Mr. Chairman, to include in my testimony, a statement from Mr. Edwin Lowry, the Director of the California Department of Toxic Substances Control, and a sheet detailing examples of coordination between the California Department of Toxic Substances Control and the California Defense Installations. In that particular statement, he expresses how the Range and Readiness Preservation Initiative might limit his ability to be an effective regulator. And, Mr. Chairman, I ask unanimous consent to include those in the record.

Mr. HEFLEY. Without objection, so ordered.

[The prepared statement of Mr. Lowry can be found in the Appendix on page 189.]

Mrs. DAVIS OF CALIFORNIA. Thank you very much.

I would also like to invite the chairman and the committee; I think it would be very instructive, actually, if we could hold a field hearing at Camp Pendleton because as the center of west coast marine activity there, it is often used as an example, I believe, of the challenges that we face in training for our military; and it would be very useful for committee members to have a chance to, you know, be on the ground there to walk the beach and the training areas and to really see and observe what impact all of this really has on the extent of training. I think that would be helpful and usually people are very happy to come to San Diego.

And, finally, with the Navy's support, the California legislature passed a bill; and I wanted to just address that briefly. This particular bill was signed by the governor to bring communities and the military together on local planning and growth issues. It requires cities and counties to include in their general plans impacts of civilian development on military installations and requires the governor's office to prepare a handbook for local officials and planners, et cetera.

The Navy has expressed its support for that legislation. I was going to ask the previous panel about that and about their support for it; but, perhaps, this panel, if you are knowledgeable of it and aware of that legislation, might be able to address it as well. I think our concern is that the department has not really provided the funds for it yet and we would like to make certain that they are able to move ahead with the tools that they need to actually deal with that legislation.

I think it is friendly to both the Navy and the communities, and I appreciate all the support for it. If I could turn, then, to Mr. Suarez, last year Mr. Shimberg of the EPA testified that environmental compliance and military readiness are compatible. And I think a number of speakers have spoken to the fact that we should not have to chose in this area. I am wondering if that is the case, then, why do we need the change in the law?

Mr. SUAREZ. Congresswoman, we believe that this change reflects discussions and deliberations that we have had with the military and reflects a need that they are probably best able to articulate. From our perspective, we feel very confident that we can continue to serve our role of protecting public health and the environment, while at the same time, affording the military the flexibility that they need. So, we are confident that if these changes are en-

acted, we will continue to be able to do our role, while at the same time, not compromising what the military needs to do.

Mrs. DAVIS OF CALIFORNIA. Are there instances and have you heard some of the—I think the criticisms perhaps that there is some overreaching. And, in fact, again, as the Director of California Toxic Substances Suggests that they will not be able to do the kind of regulation that is required by them under the law. We know that the clean air and water are as important to our military personnel who might be more subject to that even than the rest of the population. So, as we begin to acknowledge or to pinpoint where those problems exist, I guess I would ask for your cooperation in trying to understand better.

Is this something that where there really is not an overreach? And, is not some other way of dealing with this issue possible? And, I guess I would also ask, and with the previous speaker as well, we know that there is the availability of exemptions to the law. And, in fact, on Pendleton, it is my understanding that there were a number of instances, actually, I think there are portions of Camp Pendleton that were designated as a critical habitat that were excluded actually from—that are no longer part of that law really. And I am wondering why haven't we used the exceptions that are in the law more?

Mr. SUAREZ. Congresswoman, I cannot speak to why the military has not used the exemptions that exist. You are correct, that there are national security exemptions provided for in the law. I suspect, but I will leave it to our colleagues in the DOD, I suspect that going to the President to ask for exemptions is a fairly cumbersome and difficult process when you are talking about some training missions that may be impeded. But, I would leave it to my colleagues at DOD to articulate that better than I can.

Mrs. DAVIS OF CALIFORNIA. Okay. Thank you.

Mr. Chairman, my time is up and I do look forward to the panel later on this afternoon. Thank you.

Mr. HEFLEY. Thank you.

Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman. Actually my questions were primarily for the previous panel and regret very much not having had the opportunity to hear your testimony. As the gentlewoman from California suggested, we were all going over to do our duty in other ways.

Let me just ask a couple of questions, though, if I might. Generally speaking, how often do you find yourself in your professional capacities in conflict with what the military wants to do; characterize the nature of the relationship you have had with DOD, the kinds of problems that you have been forced to deal with from your perspective.

Mr. SUAREZ. Mr. Cole, I can tell you that we actually work very closely and in very much a collaborative spirit with the military as we work with them to ensure compliance with our environmental laws and to ensure that when there is not compliance, appropriate remedies are taken so that the land is cleaned up or compliance is sought. We have a number of areas where we demonstrate that co-operation.

We do environmental management reviews with the military to help them understand what their environmental obligations are and how they can comply. We provide online a compliance assistance center to the military called Fedsite, which, again, helps explain the environmental obligations that they have and how they can comport with those obligations.

And then we have our staff in the Federal Facilities Enforcement Office that works on a daily basis with our colleagues in the military to resolve instances where there may be a concern about non-compliance. And I would characterize, Mr. Cole, our relationship as a good one.

Mr. COLE. So, it is fair to say, and correct me if I am wrong, that in your view, the military has been very cooperative and very supportive of your major, the thrust of what you are trying to do consistent with its own missions?

Mr. SUAREZ. It has been my experience that we have been able to work cooperatively; and when there are difficult issues, and to be sure, Congressman, there are sometimes difficult issues, but we are able to work through those together.

Mr. COLE. Just, if we do have a situation where there is an irreconcilable conflict or difference of opinion, which mission do you think is the most important? The mission the military's pursuing in terms of training and preparing, obviously, for dangerous situations? Or also equally, you know, the very important mission of protecting the environment?

Mr. SUAREZ. I do not believe, Mr. Cole, that either one needs to be sacrificed for the other. And, in fact, our history has shown us that we have never been faced with that Hobbesian choice. So, I do not believe that—I believe that given the flexibility that exists now and what is proposed, that we are always able to reconcile those competing interests.

Mr. COLE. That's great. So, you are very comfortable with the legislation that has been proposed? You think it has been worked through in a cooperative manner and that the suggestions that we have had in front of us are good suggestions, suggestions that you are comfortable with and can live with to get your mission done, just as the military appears to be comfortable with these changes?

Mr. SUAREZ. Mr. Cole, we are and we are confident that if there is a concern, if there is a situation where there may be migration off of an operational range of a contaminant, we have the tools and the authorities necessary to protect public health and the environment. And, so we are comfortable and we support this initiative.

Mr. COLE. One last question, if I may, Mr. Chairman. I have seen some things and certainly not suggested by many reputable groups, but I have seen some rather extreme suggestions by some, frankly, rather extreme environmental groups that the military is using the difficult challenges we face at this particular moment in our history, to quote, "sort of ram through environmental regulations."

Now, my read, obviously, is these proposals have been before us for some considerable time. Military and your agencies have worked well together. You do not see any evidence that the military is taking advantage of a difficult situation to try and get regulations and changes that otherwise would not be the case, do you?

Mr. SUAREZ. I have not seen that, Mr. Cole.

Mr. COLE. Thank you very much.

Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you, Mr. Cole.

Ms. MacDonald, you may want to clarify the question Ms. Davis raised about the situation at Camp Pendleton. As I understand, there were large tracks of land that were originally excluded from the designation by fish and wildlife as critical habitat; but that recent court activity may change that—and do you know what the current status is?

Ms. MACDONALD. Yes, in a word. There was initially a designated habitat. There was a court case. The court remanded that designation back to the service. We will have a new proposed designation I think April 11, is that right? April 11? April 11 for everyone to review and comment on. And then we will go through a process and do a final critical habitat designation.

We have the option to do two kinds of exclusions between the proposed critical habitat designation and the final designation. We have done what we call a definitional exemption and then an exemption under Section 4(b)2 of the Endangered Species Act, which allows us to exempt certain habitat if we find that the benefits of excluding the habitat exceed the benefits of including the habitat. And military readiness, economics, there are a number of factors that we can consider when we consider that exclusion.

And I suspect that this—the definitional or the 4(b)2 exclusion—is what you were referring to. In my earlier testimony, I talked about the fact that these exclusions have been called into question by the recent district court case in Arizona on the Mexican Spotted Owl.

Mr. HEFLEY. Thank you very much.

Mr. Suarez, I come from a high mountain desert and we do not get a lot of water there. So, pollution of aquifers is very, very sensitive to us. And DOD currently has approximately 50 installations around the country that overlie sole source aquifers. And so if the committee adopts the DOD's recommendations here, how will the EPA be able to monitor the levels of ground contamination at active ranges to ensure that we do not get similar contamination problems at other sites?

Mr. SUAREZ. A number of ways, Mr. Chairman. First, this proposal does not affect the Safe Drinking Water Act, nor any of the provisions under the Safe Drinking Water Act. So, to the extent that there is any threat to a sole source aquifer that is a drinking water source, the EPA and the states will retain their authority under the Safe Drinking Water Act to ensure that a public drinking water supply is not threatened.

Second, to the extent that there is an operational range and there is any migration off of the range of any contaminant, either in the water or through some other vehicle, as soon as anything leaves the range, the authorities under RCRA turn on, the authorities under CERCLA turn on, and we would be able to then identify, track, monitor and require corrective action so that any contaminant would not spread to drinking water or any other sole source aquifer. So, we would continue to have the ability to do so if there was any threat or possible threat to a sole source aquifer.

Mr. HEFLEY. Do you have the ability or the cooperative arrangement with the military that you can go on to those active ranges to test to see if there are dangerous contaminants there while it is still an active range before it starts to migrate off?

Mr. SUAREZ. Yes, Mr. Chairman. In fact, we still have many reporting requirements for contaminants; and we still have the authority and the ability to inspect bases to ensure that, in fact, we do not have contaminants that are starting to migrate off and starting to pose a threat.

We do not have to wait until the threat is at somebody's water fountain or on the faucet. If we detect the threat, we can take action.

Mr. HEFLEY. Thank you very much.

Any further questions from committee members? If not, I want to thank this panel. Your testimony was excellent. The committee will stand in recess until 1:30.

[Recess.]

Mr. HEFLEY. The committee will come to order, and we are delighted to have the panel here with us this afternoon and we look forward to hearing your testimony. You may or may not have been here this morning; because of the time constraints, we will ask you to summarize your statements in five minutes and then we will put your entire statement into the record.

Also, during the question time, you will get an opportunity to expound on some of the things maybe that you did not get to say. So, this afternoon our panel is composed of Dr. Darlene Ketten, Woods Hole Oceanographic Institution and Harvard Medical School; Ms. Nina Young, Director of Marine Wildlife Conservation for the Ocean Conservancy; Mr. Lenny Siegel, Executive Director, Center for Public Environmental Oversight; and Mr. Michael Bean, Chairman Wildlife Program for Environmental Defense.

And, I wonder if we can start. We will just kind of go from left to right.

If, Dr. Ketten, you would like to start.

STATEMENT OF DR. DARLENE R. KETTEN, WOODS HOLE OCEANOGRAPHIC INSTITUTION AND HARVARD MEDICAL SCHOOL

Dr. KETTEN. Good morning, ladies and gentlemen, as—I am starting my five minutes. Yes. All right. I have to apologize to the committee, my testimony was requested rather late and a number of strandings also intervened. Therefore, you have only a draft testimony from me and I do not think you have anything written yet.

Mr. HEFLEY. We understand that you had another commitment and then when that fell through, you were able to come down. We appreciate you making that extra effort to do that.

Dr. KETTEN. Thank you, sir.

I appreciate the opportunity to provide, in this case, my opinion as an individual scientist. They are not necessarily opinions of my entire institution. But, I believe they are shared by a number of biologists. I am a senior scientist at Woods Hole Oceanographic Institution in the biology department. And I am assistant professor in Otology and Laryngology at Harvard Medical School; that is ear,

nose and throat, but at Harvard, why would you use one word when you can use five?

I have about 15 years of experience in basic hearing research in both humans and marine mammals, and, particularly in ear disease and in head and neck trauma. These two specialties have come together in the last few years to be valuable in assessing some of the acoustic impacts or potential acoustic impacts on marine mammals. Hence, my being before this committee.

I am also a fellow of the acoustical society of America, and most recently have been a member on panels on ambient noise for the National Academy of Sciences and for the NOAA Fisheries Advisory Board on acoustic exposure limits.

First I would like to agree that with, I think everyone on the panel, that we have concerns about sound use in the oceans. It is only reasonable considering that there is no endeavor by humans in the oceans that does not add to noise. We cannot do anything without introducing noise either intentionally, such as in active sonar's or unintentionally, byproducts of shipping, transport, construction.

Therefore, we are adding noise; and the academy panel determined that it is, on average, three decibels per decade that we are adding to the noise. That is quite a bit. We also are concerned because sound is an important cue to all marine organisms and it is arguably a primary sense for marine mammals. However, having said that, if we are going to use the oceans, what we essentially have to do is to decide what risks are acceptable. We simply must face the fact that there is risk. Any endeavor that carries sound is a hazard. What we have to do is to bring balance and perspective in determining what sounds are acceptable.

Originally, in part our biggest problem is that there is a lack of discrete data. There is no data that will tell us at the moment what impact any sound source will have on any species. We cannot tell you that. Lack of discrete data, combined with the relatively, I would say open wording of the original MMPA, plus some recent dramatic stranding events has led us to a rather heated litigious climate. There have been several suits that essentially have brought a halt, not only to military activity, but also to research, critical research, that would ironically have, perhaps, provided us a way to use sound to protect marine mammals.

What I am advocating here is, in fact, that the revision, in particular, the revision stating "significant" be favorably considered. The original MMPA, as I read it and understand it, was concerned with population level protection and enrichment. I, as a scientist and as a biologist, think we should be concerned with every individual case of potential harm. And I just spent the last evening working on some strandings in Virginia and Florida.

We need to look at each individual. But, an individual stranding, an individual impact, does not carry what is a biologically important idea, that is, significant. I have said the S word, "significant" to a species, just as not every bruise is terribly debilitating to each individual human. Not every impact on every individual marine mammal or marine organism is significant at the population level. Since we must accept risk, what we need is a balance.

And, in order to avoid stagnation, which is what I think we are about to find ourselves in, to avoid stagnation, we need to go forward with information and with a reasonable estimate of what is an acceptable risk. We can only do that if we acquire the data. To acquire the data, we must use sounds to have a secure environment, to have good stewardship of a secure environment, I think we have to decide what is the balance that we are willing to take.

Thank you.

[The prepared statement of Dr. Ketten can be found in the Appendix on page 131.]

Mr. HEFLEY. Thank you very much.

Ms. Young.

STATEMENT OF NINA M. YOUNG, DIRECTOR OF MARINE WILDLIFE CONSERVATION, THE OCEAN CONSERVANCY

Ms. YOUNG. Mr. Chairman, members of the subcommittee, thank you for the opportunity to present our views on the provisions of the National Defense Authorization Act that would amend the Marine Mammal Protection Act.

My name is Nina Young. I am the Director of the Marine Wildlife Conservation Program for the Ocean Conservancy, and my testimony this afternoon is on behalf of the Ocean Conservancy, the International Fund for Animal Welfare and the Marine Mammal Center.

The MMPA is our nation's leading instrument for the conservation of marine mammals. For more than 30 years the protections afforded by Congress have been critical to the recovery of vulnerable species of marine mammals, such as the great whales that were nearly decimated by whaling.

Although we are sensitive to the issue of military readiness, we do not believe that the Defense Department has demonstrated that the proposed changes to the MMPA within the National Defense Authorization Act are necessary, or even that it has exhausted all administrative remedies available under the existing laws.

The Defense Department proposes to modify the MMPA's definition of harassment, amend its incidental take authorization process, and create a separate broad exemption for national defense. The proposed changes in the definition of harassment would severely undermine the precautionary nature of the act. The definitional changes significantly raise the threshold that triggers the Department of Defense's obligations to secure an authorization to conduct activities that could potentially harm marine mammals.

Federal agencies would be required to make difficult, if not impossible, scientific judgments about whether the given activity is subject to the act's permitting and mitigation requirements. As a result, many military activities would either be exempt outright or could evade the act's requirements by relying upon the uncertainty and the ambiguity created by this new language.

Overall, the result would be greater controversy and debate, diminished transparency, the loss of scientific research and mitigation measures, impaired enforcement of the act, and an increased number of marine mammals that would be harmed by military activity.

The proposed changes to the incidental take authorization process would remove key conservation elements that restrict the scope of the incidental take to small numbers of marine mammals within a specified geographic region. These existing provisions provide an effective conservation and management strategy for restricting takes geographically and numerically, to prevent any further depletion of marine mammals and aid their recovery. The Department of Defense has failed to show that the existing incidental take process is overly burdensome, and the statutory changes, let alone that the statutory changes are needed.

Since 1994 when the MMPA was last reauthorized, the Department of Defense has applied for over 20 incidental take authorizations. None of these applications have been denied. And, in general, they have been issued within the required timeframe. Rather than amend the statute, we believe that improved coordination and advanced planning may be the most expedient way to achieve both marine mammal conservation and improve efficiency for the issuance of permits for military readiness activities.

The third major amendment to the MMPA is the Defense Department's proposal to exempt, or exemption for national defense, which would effectively create an escape clause that allows the Defense Department to bypass the incidental take permitting process all together. Moreover, this exemption is not even limited to the incidental take permitting process. As written, it authorizes the Secretary of Defense to exempt any action or categories of actions undertaken by the Defense Department or its components from compliance with any requirement of the MMPA for reasons of national defense, for a potentially unlimited number of successive two-year periods.

Again, the Defense Department has failed to demonstrate that irreconcilable conflicts exist within the MMPA or that the flexibility currently provided under the armed forces code is insufficient to merit such a comprehensive and wide-ranging exemption, one that would render the MMPA's conservation goals and mandates virtually meaningless.

Given the significant risk of changing these keystone provisions of the MMPA, the Ocean Conservancy and other interest groups should be given the opportunity to work constructively with the committees of jurisdiction, the Department of Defense and other agencies to address the concerns of all parties.

Adopting these changes to the harassment definition and the incidental take authorizations in the National Defense Authorization Act would be disastrous for marine mammals. Instead, the issues raised by the Department of Defense should be considered by the House and Senate committees of jurisdiction after significant discussions with other federal agencies, scientists and conservation organizations in the context of an overall MMPA reauthorization package.

Mr. Chairman, and committee members, thank you for the opportunity to comment on these provisions. And I would be pleased to respond to any questions that you might have. Thank you.

[The prepared statement of Ms. Young can be found in the Appendix on page 139.]

Mr. HEFLEY. Thank you very much.

Mr. Siegel.

**STATEMENT OF LENNY SIEGEL, EXECUTIVE DIRECTOR,
CENTER FOR PUBLIC ENVIRONMENTAL OVERSIGHT**

Mr. SIEGEL. Good afternoon, Mr. Chairman, members of the subcommittee. Thank you for the opportunity to address the challenge of balancing the competing and compatible objectives of military readiness, environmental protection and community development. My organization, the Center for Public Environmental Oversight, works with the people who live and work on or near current and former military bases and ranges throughout the United States.

I have five points to make in my summary today. The first is, there has never been any example presented of RCRA, CERCLA or Clean Air Act, the laws that I have been asked to address today, interfering with military readiness. In fact, the case that we have heard about from the Defense Department (potentially impacting at Fort Richardson, Alaska), the only possible impact on readiness would be through the complaint under the Clean Water Act and not under RCRA. CERCLA, of course, has no impact on readiness. It is a clean-up law.

Furthermore, these laws contain exemptions, multiple exemptions in the Clean Air Act, which gives the military complete flexibility to do what it needs to do to train and carry out readiness activities. And a fact I do not think most people realize, and I had to talk to a lot of people to confirm this while researching my testimony, the direct emissions of military aircraft, like other aircraft, are not regulated under the Clean Air Act. It is only the planning process which is subject to the Clean Air Act.

The second thing is that this initiative appears designed to address other problems that the military is concerned about. In the case of the Clean Air Act, it seems to be about, from the military's own documents, about the basing of military aircraft in urban areas. This is more of an issue for BRAC, Base Realignment and Closure, than it is for readiness.

In the case of the RCRA-CERCLA provisions, it is more an issue of clean-up, particularly the clean-up of explosive constituents, such as percolate and RDX, not about training. If you compare this language to the military munitions rule the EPA promulgated in 1997, the Defense Department has added explosive constituents. Well, when you start talking about migration of explosive constituents, you have a much more fluid situation than you do with bombs and shells. They do not generally bleed off the range until they become just chemicals.

The third point, the Range Readiness and Range Preservation Initiative would endanger public health and the environment. I have given some examples in my testimony at Fort Richardson, the bird kill, from white phosphorous. We have the situation at the Aberdeen proving ground, where people—where the drinking water supply of the public is contaminated from wells that are actually on the base, and, thus, perhaps, would be exempted from regulation under these laws if this initiative passes.

Fourth, the Readiness and Range Preservation Initiative is poorly drafted. I mean, basically the lawyers from the states and the lawyers from the Defense Department disagree about what the sec-

tion about RCRA means. And I can understand it if you actually look at the language, but there is one key thing that I think everybody has to realize, operational ranges are not just active ranges.

They also include inactive ranges, which, in many cases, should be classified closed ranges, but which the military considers inactive ranges because basically they do not want to clean them up. And I give an example in my testimony of the old mustard gas demilitarization range at the Red Stone Arsenal. It could not be used as a range again, but it is classified as inactive by the military. Thus, it is an operational range and would be exempt from RCRA and CERCLA regulation under this proposed initiative.

Finally, I go out around the country and visit military bases, talk to military personnel, as well as community groups. And I think this country does have a severe problem of encroachment. Urban sprawl is threatening our ability to train and our ability to fly aircraft out of our bases. And I agree with what most of the military people in the field tell me is that the problem is uncontrolled urban sprawl. And I think, and I have challenged the Defense Department on this, I think that the environmental groups that I am working with, Congress and the Defense Department and the states can work together to take on that common enemy, urban sprawl.

And I challenge you to include in whatever legislation emerges this year, some sort of a channel so states like California, Arizona, Texas, and Florida, that are enacting legislation to try to resolve encroachment through planning, take into account the military's needs. But, that is what you can do most, just as last year you enacted the provisions on buffer zones. There is a problem. The problem is not the environmental laws, the problem is urban growth. It is a difficult problem. I think we can work together to solve it instead of trying to roll back the environmental laws that apply to everybody else in this country and should apply to the Department of Defense.

Thank you very much.

[The prepared statement of Mr. Siegel can be found in the Appendix on page 151.]

Mr. HEFLEY. Thank you.

Mr. Bean.

STATEMENT OF MICHAEL J. BEAN, CHAIRMAN, WILDLIFE PROGRAM, ENVIRONMENTAL DEFENSE

Mr. BEAN. Thank you, Mr. Chairman. It is a pleasure to be here today. Let me begin with a short quotation. It goes as follows: "I can say with confidence that the efforts of our natural resource managers and the training community have produced an environment in which endangered species management and military training are no longer considered mutually exclusive, but are compatible." Those, Mr. Chairman, are not my words. Those are the words of Major General David Mize, the Commanding General of the Marine Corps base at Camp Lejeune, and he spoke those words just six weeks ago.

General Mize's words of six weeks ago recall testimony of some six years ago, by then Deputy Under Secretary of Defense for Environmental Security, who testified in the House Resources Commit-

tee that compliance with the Endangered Species Act has not diminished or compromised long-term military readiness.

Mr. Chairman, I do not pretend to have an expertise on the subject of military readiness. My point is not to say what does or does not impede military readiness. My point, instead, is simply to say the Defense Department itself has said different things at different times, to different people on this very issue. If I may, Mr. Chairman, I would like your permission to introduce two single-page documents into the record of this hearing.

The first comes from materials that were provided to Congressional staff this week by Defense Department officials outlining a number of problems that the Defense Department has on various bases. One of them is Fort Bragg, as depicted on this particular sheet, from those materials. And on the bottom there are three diagrams showing some old restrictions on training, endangered species based restrictions, current restrictions and desired future restrictions.

The military's point here is that they are unsatisfied with the existing conditions and would like to achieve these desired future conditions. If you go today to the U.S. Army Environmental Centers website, you will find on that website this document, which I would also like to submit, which has the first of these two graphs on it.

It is in slightly altered format, but basically those same first two graphs and the narrative that accompanies that extols what great progress and what a great success the current restrictions have been in allowing military training to be done successfully on bases in the southeast, while at the same time, achieving endangered species conservation goals.

So, again, my point is not to, you know, not to take a position of my own, because I do not have one on what does or does not comply with military readiness, but simply to say that the Defense Department is having it both ways by saying one thing at one time to one audience and something quite different to this committee.

I believe, to get to the second and most important point of my testimony, that the particular problem that the provision of the proposed legislation relating to endangered species addresses is a problem that can, in fact, be addressed without legislative change. And, I describe in my testimony why I believe that to be the case.

Section 4(b)2 of the Endangered Species Act gives the Secretary of the Interior the authority to take into account the impacts of proposed critical habitat designations on military readiness among other things, and gives the Secretary of the Interior the authority to exclude from critical habitat any area where those impacts on other desired objectives outweigh the benefits of including the area within critical habitat.

To date, the Fish and Wildlife Service has not issued, the Defense Department has not asked it to issue, regulations that spell out in detail how the Fish and Wildlife Service will take into account these military readiness issues when deciding upon critical habitat designation. But, I submit and describe in my testimony a mechanism, whereby, I believe the Fish and Wildlife Service and the Defense Department can both meet their objectives through existing law and existing authority.

Let me conclude the way I began with a quotation from Major General Mize of Camp Lejeune. He said, "Sometimes conflicts arise or a particularly complex project challenges the training and natural resource management communities. But, military thinkers are also problem solvers; rather than listing reasons why something cannot be done, we prefer to think of ways to get it done."

I submit to you, Mr. Chairman, the members of this subcommittee, that with that same attitude, it is within the power of the Defense and Interior Departments today to address creatively and satisfactorily the complex challenge that is the subject of this hearing with respect to endangered species and to do so without changing the law.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bean can be found in the Appendix on page 178.]

Mr. HEFLEY. It is very difficult, I might add, to problem solve when one side or the other of the equation does not want to do anything differently than is being done now. And I will get into that more when it is my turn.

Representative Ortiz.

Mr. ORTIZ. Thank you, Mr. Chairman.

I only have one question for Mr. Bean now. In your prepared statement, you expressed a belief that the endangered species problem being brought before the community today could be satisfactorily addressed within the framework of existing law.

Mr. BEAN. Yes, sir.

Mr. ORTIZ. You also wrote no change to the Endangered Species Act, to the Sikes Act, or any other laws are needed. Now, why do you feel like this? I mean are you so comfortable that we do not need to change any of the laws?

Mr. BEAN. I am sorry, with respect to the problem of critical habitat for endangered species, the military's proposal is not specifically to amend the Endangered Species Act. It is to amend Title 10 of the U.S. Code. My view is to solve the endangered species problem, which is the only problem I have been asked to address in my testimony, it is not necessary to amend any of those laws, either Title 10 of the U.S. Code or the Endangered Species Act or the Sikes Act.

And the reason I believe that is so is because the Endangered Species Act, in Section 4(b)2, gives the Secretary of the Interior the authority to exclude areas from critical habitat designation, which is all the military is seeking in this part of its amendment if considerations of military readiness are overriding. And, in fact, if the Fish and Wildlife Service fails to come to that conclusion and the Defense Department thinks that they must go forward, Section 7(j) of the Endangered Species Act gives the Secretary of Defense unilateral authority to override that decision. That is why, sir.

Mr. ORTIZ. Thank you very much.

I do not have any other questions, Mr. Chairman.

Mr. HEFLEY. Mr. Taylor.

Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman.

I have a couple of questions. Mr. Siegel, how would the exemptions negatively impact private property owners? Could you elaborate on that, in the legislation?

Mr. SIEGEL. How would it affect private property?

Mr. REYES. Right.

Mr. SIEGEL. Well, I can think of two things. One is under some interpretations, which I have been hearing from state officials, the exemption in there that applies to research development and test and evaluation may not just be restricted to operational ranges, but anyplace where munitions or explosive constituents are tested. And that could apply to private contractor sites.

In addition, I have heard that it is quite possible that if military activities that generate air emissions are exempted from the calculations for like non-attainment areas under the Clean Air Act, if local air districts or state air districts are not able to control that in order to hold down the pollution that people have to breathe, they would have to restrict private development to compensate.

Mr. REYES. The only other question I have for you, and, perhaps, Ms. Young as well, is I guess an opinion from you why you think we can resolve the military environmental conflicts that we are trying to resolve with the legislation without having to change the law.

Mr. SIEGEL. Well, I will give you an example. I recently attended a community meeting in Marysville, California, adjacent to Beale Air Force Base. There is a developer there, which was proposing to build a new city on the boundary of the base. And people from the community, who want to preserve their 10-acre lifestyle, they did not want to see this new city built in their community; but, they were also talking just as much about the need to preserve the Air Force's ability to fly planes out of Beale Air Force Base.

They talked about encroachment as their concern as well. The people out there have the same concerns. We are concerned about community development, the environment and readiness. And we think if we work together, we can solve them. But, we can solve them by going after what is—if you did an assessment, a quantitative assessment nationally, of what is getting in the way of training, what is getting in the way of being able to fly aircraft in and out of Air Force and Naval air station bases, you would find that it is urban growth and not the Clean Air Act, which is getting in the way of that.

Mr. REYES. Ms. Young.

Ms. YOUNG. Thank you, Mr. Congressman. I believe that we have to look at the evidence before us and in the over 20 exemptions that have been, or authorizations for incidental take or harassment that have been requested by the military, none have been denied. So, it seems to me that the problem is really not there, that they really have not made their case to us.

And that in a sense, what we would probably benefit from is looking at the authorization process as its implementing by the agencies. Perhaps we need greater clarification, provide greater information to the Department of Defense, to scientists, to all parties who apply for incidental take permits so they know what is expected and what is required of them so that they get their permits

on time and meet the statutory mandates that are already in the law.

I think a programmatic review of the permitting process would be a great benefit to really help us both retain the goals of marine mammal conservation, but be responsive to military readiness activities and their receiving their permits.

Thank you.

Mr. REYES. Thank you, Mr. Chairman.

Mr. HEFLEY. Ms. Davis.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman.

I think one of the things that I have actually been very pleased to see on the bases in the San Diego area is what incredible stewards, actually, the military has been. And I think it is a well-kept secret that, perhaps, could really gain more attention and would help people to understand the role that they have played. And I think it is because that story has not been told very well in the many cases which exist that we, in many ways, have this problem.

But, I also know that the community, and certainly the environmental community, is as concerned about readiness as anybody is. And that story also needs to be told.

I wonder if you could help me with this because in the earlier testimony it was mentioned that one of the reasons that the existing laws do not work very well is that to get an exemption, we would actually have to go to the President to secure that. And, you have all suggested in some way that there is a process there, but it just has not been used very well.

Could you please clarify for me, whether or not, in fact, these requests have gone as far as the President's desk or if, in fact, it has been—you know, where have they gone and why do we keep saying well, this is unworkable because it has to go to the President?

Mr. SIEGEL. I would be happy to offer an answer with respect to the Endangered Species Act. And I base my answer on discussions I had six weeks ago. There was a symposium I attended that was sponsored by FORSCOM and others and there were a great many military people from all of the services there. And I spoke to a number of them and asked them the following question.

Has there ever been a request for the Secretary of Defense to exercise the authority under Section 7(j) of the Endangered Species Act to exempt a defense activity from the requirements of the Endangered Species Act? Has there ever been one that has gotten to the Secretary of Defense's desk? And the answer I got from Defense Department representatives in a position to know the answer to that said, there has never been a request that has ever gotten to the secretary's desk. Indeed, there has never been a request that has gotten to the environmental desk of the Defense Department.

So, and the explanation I was given was we have been able, in almost all cases, to work things out at the base level in a way that is satisfactory; and base commanders, whose responsibility it is to forward up the chain of command a request for intervention if it is not possible to resolve things, have never submitted those requests up the chain of command.

Mr. BEAN. If I might add, again, I know of no situation in which RCRA or CERCLA has been used to impair military readiness. There is some example of a Presidential exemption under RCRA at

Groom Lake in Nevada, not having anything to do with munitions, but for preserving the secrecy of that facility and that has been done routinely by Presidents Clinton and George W. Bush.

As far as the Clean Air Act, not only is there a Presidential exemption, there is an exemption which does not require the President's involvement for national emergencies which includes terrorist attacks and there is a waiver for basically the transferring of aircraft and ships from facility to facility on a routine bases.

So, the current law provides plenty of exemptions. Plus, the fact is there is no direct regulation of emissions from vehicles in the military, you know, from aircraft. So, it is a matter of if we are going to move a squadron from Kessler Air Force Base to some other state, do we look at the air pollution impacts? Is that something we should consider in the BRAC process? I think we should. But this would take that out of the equation.

Mrs. DAVIS OF CALIFORNIA. Thank you.

To your knowledge, and I guess anybody could answer this, is there any other legislation that has been proposed by the Administration affecting the Marine Mammal Protection Act? Is there anything else that is out there? Could you describe it?

Dr. KETTEN. Yes, Congresswoman, I would like to respond to that. As we heard this morning, Dr. Hogarth referred to an Administration bill to reauthorize the Marine Mammal Protection Act. That was delivered to Congress in February. It contains a similar provision, as this bill would to change a definition of harassment. And that is why we feel that it is important that we work both with the committees of jurisdiction, scientists, other conservations groups.

There are a lot of interested parties out there who apply for incidental take permits, those incidental take permits being married to the definition of harassment. It is important to bring all those interest groups to the table and devise a workable solution, rather than to take up that issue here as a separate cutout, so to speak, for military readiness.

I believe if we bring all the parties together we can satisfy their concerns and develop something within a Marine Mammal Protection Act reauthorization package that would both meet the goals of the act and all of the concerns that have been expressed by the various interest groups. Thank you.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Mr. Chairman, may I very, very quickly here, I mentioned earlier the Knight bill in California that brought together the Navy and the communities in a bill that I think everybody felt pretty comfortable with. And I just wonder if you are familiar with that, perhaps, Mr. Siegel as well in terms of this coming together. I know I have a letter and I can submit this for the record, Mr. Chairman, actually from Admiral Betancourt in California who worked with the legislation. Is that a good model? Is that what other communities should be looking at, particularly as we address urban sprawl, because I think that is what it is trying to get at?

Mr. SIEGEL. When I talked to military officials in the field, such as in California, the Commander of Navy Reach in the southwest, that is what they are concerned about. They talk about a plan to build a new city in the Antelope Valley in Los Angeles County

which would make it impossible for the military jets that normally fly through there at the low level to continue training there or testing there. They want to implement the Knight bill to make sure that that does not happen. It is going to be a difficult fight. The backers of this development are very powerful. But they feel that that legislation with a small amount of resources from the Department of Defense would make it possible to say hey, this does not make sense.

And, I, as an environmentalist, say it does not make sense to put a new city in the middle of desert anyhow. So, this is something I feel we can work together on. There are a number of examples. Nellis Air Force Base, a similar kind of development. The environmentalists do not want to see the desert developed. Luke Air Force Base in Arizona. It is not just California. I think the Navy took the lead in California and that may set an example for the nation. But we need a tool that everybody can use to accommodate community development, the environment and readiness.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Thank you, Mr. Chairman.

Mr. HEFLEY. I thank you very much.

Several of you seem to have made the case, particularly Ms. Young, that the military has not made their case for this, that things work fine the way they are now. And that we ought to continue just as we are. On the contrary, the military's made a very, very good case for this. There are some real problems out there. And, we are not prejudging; this committee's not prejudging what ought to be done with it, nor, I think our experience last year shows that we are not here to rubber stamp whatever the Defense Department wants. We did not do that last year, as you may recall. We were very careful about what we did and very targeted.

Let me ask you, Ms. Young, under the present definition of harassment of a marine mammal, as I understand it, if a sea lion is sleeping on a buoy and a Navy ship goes by and the wave or wake jiggles the buoy and the sea lion wakes up and slips off into the water, that that would be harassment. Is that your definition of harassment under the present law?

Ms. YOUNG. Thank you, Congressman. I do not believe that is the definition that exists currently. The definition that exists currently does not encompass those de minimis kind of harassment or de minimis types of changes in behavior. What we see in the definition that exists before us is looking at behavior patterns.

So, changing a behavioral pattern of the animal is not an animal just turning its head or responding to some transient type of behavior or action, as you have noted. We are talking behavior pattern that encompassed biologically important behaviors to these animals, behaviors that speak very much to their survival. We are talking about nursing, breeding, feeding, migration and all these things that these animals need to do to recover and to survive in the marine environment.

Mr. HEFLEY. Well, I think all of us would agree with that, if that was the definition. But, that is the definition that is being—that is not the working definition that is being used right now.

Dr. Ketten, would you like to respond?

Dr. KETTEN. Yes. Ms. Young, with all due respect, thank you for the chance to respond. While I believe Nina and I are in complete agreement that it should not be the de minimis test, it is, in fact, legally, literally the case. And, that was my point about significance. Both the NRC panel and the acoustics guidelines panel addressed this issue and strongly advocated particular language which is biologically significant in the MMPA revision that is also under consideration.

My concern at the moment is the timeliness of it. I think we are in agreement that all of these parties can work together. But, I am concerned MMPA that is being brought forth by NOAA fisheries and the Marine Mammal Commission is not going to actually come forward in a useful timeframe. What we are seeing is, indeed, a lot of lawsuits popping up, particularly in the last few months, based on that literal translation of harassment, because there are no legal boundaries being placed on harassment, which is interpreted as any behavioral change at even an individual level.

The other concern in this is also small numbers. Small numbers has no absolute value, whereas, biologists in general believe it has to do with a percentage of population. When you are dealing with the White Whales, one individual can indeed be biologically significant. Whereas, when you are dealing with 100 elephant seals and there are millions of them, that may not be a biologically significant number. We need to put that perspective into this and eventually some changes will occur in the legislation that will do that. But, not necessarily in time for the interest of this committee.

Mr. HEFLEY. Well, thank you for that. And I am glad you brought up the court case situation because a lot of times in the past, bases have been able to work out arrangements that work for everybody. But, because of court cases, it is jeopardizing their ability to do that in the future. And, much of what they are trying to do here is to maintain the status quo so that they can work out some of these things.

We have heard extensive testimony last year from the DOD explaining that exemptions, we talked a lot about the exemptions and using the current exemptions, have not been used much because they are cumbersome, they are slow, and they are designated for national emergency. They are not designated for normal training activity.

Let me ask all of you this, Fort Hood Texas is one of our really premier installations for the Army. It has approximately 200,000 acres of training area, of which 66,000 acres, or 33 percent of the training land, is committed to core and non-core habitat for two endangered species. Artillery firing, smoke generation and riot control grenades are prohibited within 100 meters of the boundary of these designated areas. And the use of camouflage netting and barbed wire are entirely prohibited in the core area.

In addition, the presence of cultural artifacts restricts an additional 11 percent of Fort Hood's training area. So, we have here, out of 200,000 acres of training, now remember, our equipment is faster, heavier, more long-range than it used to be, you need more land, not less land, to train properly. But, now you have 128,000 acres out of 200,000 acres that have restrictions on digging, which affects 64 percent of the training areas. So, you add all this to-

gether and you have 84 percent of Fort Hood that has restrictions on the training area. Now, does that make sense to any of you? Or does that look like it might be a problem?

Mr. SIEGEL. Mr. Chairman, if I could respond to your question, I have some familiarity with Fort Hood. We, in fact, are working with the Central Texas Cattlemen's Association and private land owners in the vicinity of Fort Hood to try to restore habitat for some of the endangered species that occur on and off Fort Hood with the goal of recovering those species and getting them off the endangered species list.

I do know at Fort Hood, I do not know the precise acreage, but a large fraction of Fort Hood is leased for cattle grazing. So, there is a lot of Fort Hood that is available for cattle grazing use. And I guess I would raise the question to what extent that may be precluding the use of some of that same land for training purposes.

You made the point a moment ago and I want to agree with this point, that the military has made a persuasive case that they have difficult problems. I agree with you. They have made a persuasive case. They are faced with a lot of difficult problems. And, in fact, if you could turn the clock back a decade and look at Fort Bragg a decade ago, when the military was faced with some significant restrictions on training because of the red-cockaded woodpecker, it would have been very difficult to conclude that there is any solution to this problem.

But, in fact, today, a decade later, what representatives of the Army and, indeed, the other services, said was that the solution produced in 1996, a solution that allowed relaxation of some of the restrictions that were then in place, in return for some habitat management activities that Fort Bragg would voluntarily undertake. Fort Bragg is now operating with less restrictions on training and producing more of the endangered woodpecker than they formally had.

So, my point is not to argue with the assertion that the Army has made a persuasive case. There are serious problems. What I assert is they have not demonstrated that there is an absence of solutions. I believe there is no absence of solutions if they are willing to be creative and serious about seeking those solutions in the existing law.

Mr. BEAN. Mr. Chairman, could I just add?

Mr. HEFLEY. Yes, sir.

Mr. BEAN. It would be helpful to all of us who are trying to resolve these problems perhaps if your committee would request from the Defense Department a description of their agricultural outleasing practices such as former logging at Fort Bragg or cattle grazing at Fort Hood, to determine to what degree those are affecting the species on those bases and the ability to train on those bases. I think it is one component that we have not heard much about. Historically, it has been a problem. I do not know to what degree they have resolved it.

Mr. HEFLEY. You know, we have looked into that somewhat. And one of the things about Fort Hood is that part of the agreement when the cattle ranchers gave up that land down there for the fort, was that they would continue to be able to lease the land when it was not being used for training. You can run the cattle off when

you want to train on that land. But, when it is not being used for training, they could still graze. But, I think you are right. I think those things ought to be looked at as well.

Last year, one of the proposals that we passed out of here would seem to make a lot of sense to me, did not get through the Senate last year, but it is encompassed in the plan this year too I think. One of the proposals was that if a base develops a wildlife management plan, an endangered species management plan, with the state wildlife agency and the federal wildlife agency, then that was satisfactory to all of them, because you want to recover the species.

Now, this to me seems like trying to deal with both values, not just one or the other, but with both values; then that land would not be declared critical habitat, which means you have to stay off of it. If they work out a satisfactory thing, not just on their own, not just out of the air, but with the wildlife agencies involved, does that make sense to you all?

Mr. SIEGEL. Well, I think that probably falls to me because of the focus in my testimony.

Mr. HEFLEY. And, very much what happened with the woodpecker at Fort Bragg.

Mr. SIEGEL. What the Fish and Wildlife Service and the Army have done is to rely upon sort of functional equivalence determination and in doing so, they have been sued on at least one or two occasions, I believe, and found that that is an inappropriate thing for them to do.

However, I made the point in my testimony that Section 4(b)2 of the act allows the Fish and Wildlife Service to exclude an area from critical habitat if there is significant adverse impact upon military training with or without an INRMP, but certainly with the presence of an INRMP that would be further justification for the Fish and Wildlife Service to take that into account in its balancing that is authorized, indeed, mandated by Section 4(b)2 of the Endangered Species Act.

So, I think that what—this is the fundamental point of my testimony, much of what the Defense Department has asked for in this part of its testimony, can be accomplished administratively without changing existing law.

Mr. BEAN. If I might add, because this also applies to RCRA, it is easier for people at the installation level to obtain funding from headquarters where there is a regulatory driver. If something is just being done voluntarily, we may all agree that it is good, but they might not be able to get the funding, that is just what I have heard is the problem with some of the INRMP's, (in the west coast we pronounce it differently). And, so, if you were to make that adjustment, you would have to figure out how to make sure that this becomes a class one compliance activity that would be entitled to funding in what is, unfortunately, a very scarce basket serving the environmental programs.

Mr. HEFLEY. Any other comments on that?

Let me ask you one other thing to see if you think it is reasonable, out at the National Training Center at Fort Irwin, the Mohave Desert, it is a vast training center, it is the big maneuver center for the Army tank training. You move a lot of equipment, a lot of people over great expansions of space. You fire a lot of live am-

munition, given on that there are 22,000 acres that had to be designated as critical habitat for the desert tortoise.

And then there is a milk vetch out there, a weed of some kind, that is supposedly endangered as well; although I understand they are everywhere, that you cannot step in the Mohave Desert without running into one of them practically. And, it is estimated that it will cost \$75 million to acquire and manage additional land exclusively for the preservation of the desert tortoise and to mitigate the adverse affects on that. Does that amount of land or that amount of taxpayers' dollars make any sense to you?

Mr. SIEGEL. Well, I will also address that, again, because it involves endangered species that is subject to my testimony. I would argue that it does, but I would recognize that many people would disagree with that very strongly. I would also argue, though, that if that is excessive and then if those requirements imposed upon the military unacceptable restrictions on what they can do, Section 7(j) of the Endangered Species Act gives the Secretary of Defense the unilateral trump card that he can play anytime he wants to exempt his actions from the requirements of the Endangered Species Act. He has never used that authority in the 25 years it has been in the law.

Mr. HEFLEY. That 75 million would amount to all the tax dollars that about 12,000 American taxpayers pay. All their tax dollars, every dime, none of it would go for defense or healthcare or anything else. It would go for the desert tortoise. Somehow or other that bothers me.

Yes, sir?

Mr. BEAN. Mr. Chair, if I could raise another issue related to the future use of Fort Irwin, something that Mr. Fatz raised at the Defense and Environmental Forum last month about the Clean Air Act. They are expecting problems in a year or two as new Clean Air Act restrictions for PM2.5 come into play. At the Defense Environmental Forum sponsored by Mr. DuBois's office, I suggested the formation of a dialogue or discussion of those issues before they become a regulatory argument.

I believe that a lot of these things, if you put the—bring the various parties to the table as we did in the National Dialogue of Military Munitions with the Federal Facilities Environmental Restoration Dialogue Committee, the various parties can find creative solutions that will meet both their needs. If we wait until the point where people are seeing themselves in court, we are going to have a lot of fighting. Maybe one side will win, maybe the other will win; but we know there is a problem that is coming up, let's address it now. Let's not wait until we have no easy solutions.

Mr. HEFLEY. Dr. Ketten, if I might, it is my understanding that one of your colleagues at Woods Hole, Dr. Peter Tyack, recently had his research activities curtailed after a lawsuit was filed. Would you describe what his research was and do you anticipate—I think from your testimony I would assume that you do anticipate further research projects, research projects that are beneficial to marine mammals, being curtailed simply because of these kind of suits.

Would you speak to that?

Dr. KETTEN. Yes, sir, thank you for the chance to discuss that. In Peter Tyack's case, he had proposed and then funded and received permission as necessary for the permits. Again, this brings up the case of the legislation because permits have been in place for the lead federal agency (LFA) suit and for Peter Tyack's suit, as well as for the National Science Foundation (NSF) ship, the Ewing, all of which are under injunction. And, in the case of Dr. Tyack, he was to test a form of sonar which is, in fact, a sonar that works within the frequencies and within the intensity levels of conventional fish finders.

The idea of this sonar was that it would be sufficiently long ranging to be able to detect whales at a reasonable distance to prevent ship impact. It is used on commercial shipping, in particular, notifying the ship master that the whale was in the vicinity. To do this, the estimated level that the animal would receive was well below what we think would injure their hearing. And, further, the frequencies used were well beyond the range of normal functional hearing of Gray Whales and humpbacks. Nevertheless, because there was the possibility of a behavioral change, that is exactly the analogue that you described for the sea lion turning, a lawsuit was brought on that basis, that individual whales might be disrupted behaviorally, disturbed by the sound.

There is no way to go about determining if you can detect the whale at a distance and also at what levels you can use that sonar without doing these playback, as they are called, experiments. The lawsuit succeeded. Consequently that particular experiment will not go forward. As I said before, there is a trend—more and more lawsuits are being brought up.

I am particularly concerned about the LFA suit because it is my data on an entirely different species possibly impacted by entirely different sonars. There is no continuum between those two sonar types, yet my data are being used to impede the use of LFA. I believe it is an overly broad extrapolation of existing data that is being brought up.

Again, the NSF ship is under a similar injunction. The oceanographic community, the marine mammal community are all concerned that because there is this possibility of very broad interpretation of the existing regulation; and, frankly, there is a commonality between the military and research. We are the slowest moving targets.

There are no regulations currently in place that affect commercial shipping, fish finders, recreational and, in many cases, even construction. We are not addressing, there are some—but, we are not addressing what the NRC panel thought might be the most significant hazards because we are being distracted by the other sound source lawsuits.

Mr. HEFLEY. I have to tell you, that seems outrageous to me. You have a program that's designed to save the whales; no scientifically verified harm can come to the whales as a result of this program, or we are assuming not and your experimenting to see if it does and then you are shut off from doing it.

Yes, ma'am?

Ms. YOUNG. Mr. Chairman, if I may. I am not an attorney. I have been trained more in the area of science, but it is also my under-

standing that some of these lawsuits were brought on the grounds of compliance with NEPA. And not so much with the definition of harassment, but compliance with NEPA is critical.

And it goes back to my point that I think we need to provide clear guidance, not only to the military, but to scientists of what is expected of them. They need to know when they are required to undertake environmental assessments, environmental impact statements. We need to provide clear guidance as to what information they need to provide to the agency itself.

My organization does not want to see science impaired. I think Dr. Ketten brought up key issues—that we know very little about sound. And this is an emerging threat to marine mammals. And we need to support research into sound. And my organization is looking into ways to do that selectively with the scientific community to seek ways to do that. But, what we are talking about is when many of these scientists, or, in the case of the military, come before the National Marine Fishery Service seeking a permit, they are doing so for activities that have implications for marine mammals many times that we do not even understand.

And these are vulnerable species with great cultural and economic significance. These are animals that we are talking sometimes as few as 300 in the case of the White Whales and 2,000 in the case of the sea otter. And, so, I think what we need is a system that is conservative, that has many tiers to it that preserves the small take provisions in such a way that we are looking, not only at negligible impact, which is a clear scientific standard, but that does not always give us guidance, especially in terms of harassment. Sometimes the science is so poor, we cannot even evaluate whether or not we will meet that standard.

So, congress, in its wisdom, did restrict the takes to small numbers to create a safety net to ensure that we would not hinder the recovery of these animals. We need to work with the military and the science community to make sure that we can allow science and military readiness activities to go forward and that it will not jeopardize important biological behaviors of these animals.

We have to get out of the debate about what level of significance in terms of the actions itself, whether it is de minimis, or whether it is up to the level of abandonment, which I would argue we do not want 300 White Whales, where there are only 300 of them left, stopping their nursing balance. We need to find something in the middle where we can move forward, judge it on the basis of the scientific importance of the animals and be precautionary. Thank you.

Dr. KETTEN. If I may, please. Clearly, we have very common concerns and interests. And we are in agreement in how we need to proceed. Where we diverge is that we can see before us that the interpretation of the existing language has now brought us to a complete halt in both research and military activity. It is being very strictly—it is going past precautionary. I advocate strongly precautionary and what the reasonable man would do. But, the reasonable man, in the absence of data, does not necessarily stop cold. And that is what we are seeing evolving.

As I would like to underscore, permits were in place. This had been peer reviewed, the best possible science brought forth. In the absence of data, we have to look at relevant studies, not necessarily

to the immediate point, but at least related. All of that was done. Yet, the fear of an acoustic impact without data was the overriding judgment. What I am seeing is that the public, because of the difficulty of understanding acoustics and the potential for harm from them, is overreacting in a wide range of cases.

In Peter Tyack's case these were humpback whales and Gray Whales that were going to be tested. Tested with the greatest precautions. Any behavioral change would have been noted and the test stopped. Yet, it was still denied. This is not like the White whale in which, as I said before, one individual with some significant harm is an important case. If we are talking about a gray whale turning its head to look at the sound, that gives us a very important data point, which we now will not have.

Mr. HEFLEY. You know, I hope all of us are environmentalists and I want the environmentalism to be based upon science. And when you shut down an organization like Woods Hole, for crying out loud, with its reputation for scientific integrity, it leads me to believe that there are a lot of people in the environmental movement who do not want good science, that they simply want emotion, because if you got good science it might not fit in to your already constructed philosophy.

I am not talking to anyone in particular here, but in your already constructed philosophy, we need people like Woods Hole doing the scientific analysis so we know what we are doing. I do not want to lose one of the White Whales. I do not want to lose any of them. But, obviously, they were not experimenting on those. They were experimenting on whales where we had a lot of them.

Ms. Davis, you had something else.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman.

I think in many ways this goes to the heart of what is good public policy. And if I am reading this correctly, and I need to go back and have a really good look at it, am I understanding correctly that part of what is being asked for in the initiative is allowing the Pentagon to totally bypass the review process so that you do not have the ability to allow the public, to allow appropriate groups to have a look at that, at least that is—I think that is what some people are reading into this perhaps. And, could you help me and clarify that.

Ms. YOUNG. I would say—thank you, Congresswoman. I would that in some cases we may be facing that situation because the level that we are talking about is to significantly disrupt the behavior or to cause it to be actually abandoned. And if we are talking about abandoning the behavior, arguably, that is a fairly high threshold to what constitutes harassment. And in many cases, you would not want an animal to abandon behavior such as nursing, breeding, feeding; these are all critical behaviors to the animal. I think what this will lead us into is not more certainty. Adding the term significant does not guarantee more scientific certainty.

If anything, it will probably result in greater debate, even more lawsuits. And, so, we need to look at what are the behaviors we are trying to protect, how best can we do that and where can we set that threshold. And, clearly, the threshold that has been set here goes even beyond what was recommended by the NRC panel. So, it's important that this goes beyond what some of the scientists,

of course like Dr. Ketten herself, recommended. They did not recommend that it be taken to the level of abandonment. And, so, it's clear that with that threshold so high, we will probably see some activities, military activities simply evade the permit process.

Mr. BEAN. May I add to that?

Mr. HEFLEY. Ms. Ketten wanted to respond, then I will get to you.

Dr. KETTEN. Sorry. Congresswoman Davis, if I have only briefly read this, and I must say I focused on readiness and range preservation for the marine mammal issues, but I would point out that to the best of my understanding of these words, absolutely they are not asking for an exemption from public review. In fact, one—where am I? I am Section B under pursuant to Section 1382C of this title, the secretary shall withdraw or suspend for a time certain the permission to take marine mammals granted under subparagraph A if the secretary finds after notice and opportunity for public comment. Over and over again I see within this document, C subsection I requirements for notice and opportunity for public comment.

So, I do not read within this implicitly obviating public review or peer review. I would have to defer to someone who has read it thoroughly.

Mr. HEFLEY. Ms. Davis, I think the testimony from the environmental regulators this morning indicated that, as well, they did not think there was anything in here that would keep them from doing their job or protecting the species involved.

Yes, sir?

Mr. SIEGEL. Yes. In general, I think that we would all agree that there are probably some instances where there is a difficulty in the way that the law is applied. I might, if I knew more about it, agree about the Woods Hole case. That maybe there should not be a court order against that particular research. The key thing is whether the number of conditions, situation in which the military is having trouble complying with the law, and/or could get exemptions from the law are sufficient for an across the board relaxation of the environmental laws, giving the military a special treatment that no other institution in society is being offered.

Maybe there is a problem, maybe I would agree that at Fort Irwin we should do something special to allow the military to continue training. But does that mean we should relax state implementation planning, the general conformity regulations across the board at military bases? That seems to me like the solution goes way beyond what is documented as the problem.

Mr. HEFLEY. I think you ought to read the bill too, because I do not think there is any grandiose relaxing rules and regulations. I think that, again, we do not know what we are going to do with this, but it is pretty well crafted I think.

Mr. SIEGEL. The Clean Air Act provisions, four out of the five are permanent, would eliminate, make invisible from the regulatory standpoint, the missions created by military readiness activities. That is to me a fairly broad definition, whether you want to call it a clarification or exemption, it applies to all facilities with military readiness activities, all military readiness activities. There is even some question given the wording of the bill, which I do not

think is that careful whether power plants are included because they are not mentioned in those activities which are supposed to be excluded from the definition of military readiness activities.

Mr. HEFLEY. And it is not all facilities, it is all readiness activities on those facilities, not all activities on the facilities are readiness activities.

Mr. SIEGEL. What I am saying is they did not clearly define that to include power plants.

Mr. HEFLEY. Well, that is a good point. But, we do thank you very much for coming today. And we want to work with you as we go through this process. Frankly, if you do not think anything should be done, I do not know how we can work with you to try to get to some kind of middle ground to solve the problem. If you see how we can work together to come to some kind of sensible middle ground that protects both of the values that we are dealing with, we very much would like to sit down with you and see if we can get from here to there. But your testimony, in any case, has been extremely helpful today and we appreciate it.

The committee stands adjourned.

[Whereupon, at 2:37 p.m., the subcommittee was adjourned.]

A P P E N D I X

MARCH 13, 2003

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 13, 2003

Opening Statement
The Honorable Solomon P. Ortiz, Ranking Member House Armed
Services Military Readiness Subcommittee Hearing on Department of
Defense Environmental Legislation Provisions
March 13, 2003

Mr. Chairman, I join you in welcoming all of our witnesses to this hearing today. Their presence here today should help us better understand the issues associated with sustaining essential military force readiness while protecting the environment.

But first, I want to thank our military personnel and dedicated civilian employees for their dedication and sacrifices especially during this time when our nation is facing some daunting challenges. With the exceedingly high OPTEMPO, all of the services' active components have experienced more deployments with fewer people. The reserve components are busier than they have been since the end of the Korean conflict. Deployments are part of military life and our military and civilian personnel and their families are meeting the challenges associated with repeated deployments and often long family separations. I take this time to personally thank all of them for their sacrifices.

Mr. Chairman, there is no doubt that we need to train the way we intend to fight. Training realism has always been the best preparation for performance in combat. There is a lot that can be accomplished using simulations in some specific situations. On some occasions I have heard some of my colleagues and others speak of the use of simulations as a cost savings measure. Just because it appears to make good budget

sense doesn't mean it makes sense at the tip of the spear. I remember from my own military experiences that when you train with live ordnance, you get the greatest degree of training realism. It gets the focused attention of everyone involved in the training and helps to develop an understanding of the effects of munitions that you cannot get from using simulators.

Modern weapons and sensors allow for longer-range engagements, but also require more operating space to adequately test and train with those improved capabilities. For example, some years ago the artillery in the Army divisions had a maximum range on the order of 10 to 15 thousand meters. Now we are looking at being able to provide artillery support far in excess of that range. I also understand that our newer aircraft engines are noisier than some of the older power plants. At the same time, outside pressures -- increasing urbanization around installations, reallocation of electronic spectrum to commercial sectors, and constraints on rangeland to support environmental conservation activities -- increasingly restrict space available for military readiness related activities. I am concerned Mr. Chairman that if something is not done, the tensions induced by the results of encroachment along with the need for increased operating space will only worsen. We cannot stand idly by and do nothing. These tensions pose serious risks, to military readiness given the military force readiness requirements of the evolving national strategy.

Whether this subcommittee or some other subcommittee takes some action is not the issue. What is important is that this nation takes

the actions required to responsibly balance the competing needs between protecting the environment for the future and ensuring the ability to adequately train our military forces.

I am especially pleased with the actions of my City of Corpus Christi regarding potential encroachment concerns. In this case, the City purchased land that will serve as a buffer between the military base and the existing civilian community that ensures the unrestricted use of the air space and land for military readiness activities. I am also aware that the state of California enacted two separate statutes addressing this issue. Those two statutes, developed at the request of the US Navy, offer the potential for use as a model for other state and local communities attempting to address the encroachment challenge. I am also pleased to learn of the improved dialogue between the affected governmental agencies and the vested environmental groups.

Again, I welcome our witnesses today and look forward to their testimony and response to questions.

Thanks you Mr. Chairman.

STATEMENT OF
DEPUTY UNDER SECRETARY OF DEFENSE
(INSTALLATIONS AND ENVIRONMENT)

RAYMOND F. DuBOIS, Jr.

BEFORE THE

House Armed Services Committee
Subcommittee on Military Readiness

March 13, 2003

NOT FOR PUBLICATION
UNTIL RELEASED
BY THE COMMITTEE ON
ARMED SERVICES

**TESTIMONY OF DEPUTY UNDER SECRETARY OF DEFENSE
(INSTALLATIONS AND ENVIRONMENT)
RAYMOND F. DuBOIS, Jr.
PREPARED FOR THE HOUSE ARMED SERVICES COMMITTEE
SUBCOMMITTEE ON MILITARY READINESS**

**RANGE ENCROACHMENT
MARCH 13, 2003**

INTRODUCTION

Mr. Chairman and distinguished members of this Subcommittee, I appreciate the opportunity to discuss with you again the very important issues of sustaining our test and training capabilities. The Department is transforming its force structure to meet new security challenges and transforming the way it does business. The Secretary of Defense has argued forcefully that we must transform the military in order to prevail in the Global War on Terrorism and to prepare for future threats to American security. Our military capabilities must become more lethal, agile, and prepared for surprise. This translates into a renewed emphasis on taking care of our people, providing facilities to support the warfighter, and modernizing our business practices – all while protecting the environment and those assets for which we have stewardship responsibility.

Preparing America's young men and women for battle – preparing them and their equipment to fight and win on the first day of battle – is a critical component to this transformation equation. I have said many times before, “we need to train as we fight, but the reality is we fight as we train”. Our collective task is to find the appropriate and necessary

balance between the use of military lands for their unique readiness purposes and the protection of our nation's environmental heritage. This is the issue that I wish to discuss with you today.

2003 READINESS AND RANGE PRESERVATION INITIATIVE (RRPI)

DoD's primary mission is maintaining our Nation's military readiness, today and into the future. DoD is also fully committed to high-quality environmental stewardship and the protection of natural resources on its lands. However, and as we have discussed before, expanding restrictions on training and test ranges are limiting realistic preparations for combat and therefore our ability to maintain the readiness of America's military forces.

Last year, the Administration submitted to Congress an eight-provision legislative package, the Readiness and Range Preservation Initiative (RRPI). Congress enacted three of those provisions as part of the National Defense Authorization Act for Fiscal Year 2003. Two of the enacted provisions allow us to cooperate more effectively with local and State governments, as well as private entities, to plan for growth surrounding our training ranges by allowing us to work toward preserving habitat for imperiled species and ensuring development to land uses that are compatible with our training and testing activities.

Under the third provision, Congress provided the Department a regulatory exemption under the Migratory Bird Treaty Act for the incidental taking of migratory birds during military readiness activities. We are grateful to Congress for these provisions, and especially for addressing the serious readiness concerns raised by recent judicial extensions of the Migratory Bird Treaty Act.

Last year, Congress did not act on the other five elements of our Readiness and Range Preservation Initiative. These five proposals remain essential to range sustainment and are as important this year as they were last year – maybe more so. The five provisions submitted this year reaffirm the principle that military lands, marine areas, and airspace exist to ensure military preparedness, while ensuring that the Department of Defense remains fully committed to its stewardship responsibilities. The remaining provisions:

- Authorize use of Integrated Natural Resource Management Plans in appropriate circumstances as a substitute for critical habitat designation;
- Reform obsolete and unscientific elements of the Marine Mammal Protection Act, such as the definition of “harassment,” and add a national security exemption to that statute;
- Modestly extend the allowable time for military readiness activities like beddown of new weapons systems to comply with Clean Air Act; and
- Limit regulation of munitions use on operational ranges under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA), if and only if those munitions and their associated constituents remain there, and only while the range remains operational.

This year’s proposals do include some clarifications and modifications based on events since last year. Of the five, the Endangered Species Act (ESA) and Clean Air Act provisions are unchanged.

RCRA and CERCLA.

Our proposed amendments to RCRA and CERCLA have been slightly revised to make it absolutely unambiguous that they do not affect our cleanup obligations on closed ranges. Last year some misinterpreted our proposal to apply to closed ranges. We included new language to clarify that our proposals have no affect whatsoever on our legal obligations with respect to cleanup of closed bases, or of bases that close in the future.

In addition, we have revised a provision in last year's bill designed to ensure that our proposal did not alter EPA's existing protective authority in section 106 of the Superfund law. This year's version is therefore even clearer that notwithstanding anything in our proposal, EPA retains the authority to take any action necessary to prevent endangerment of public health or the environment in the event such risk arose as a result of use of munitions on an operational range.

MMPA.

Finally, this year's Marine Mammal Protection Act (MMPA) proposal includes new proposals as well.

This year's proposal will:

- First, like last year's proposal, clarify the term "harassment" in the MMPA, which currently focuses on the mere "potential" to injure or disturb marine mammals. The new definition, as we requested last year, reflects the position of the National Research

Council (NRC) and focuses on minimizing injury and biologically significant disruptions to behavior critical to survival and reproduction.

- Second, this year's language will address new concerns resulting from a recent Federal District Court's ruling highlighting a number of deficiencies in application of the MMPA to military readiness activities. As you may know, the Navy and the National Oceanic and Atmospheric Administration lost an important case last year regarding a vital anti-submarine warfare sensor—SURTASS LFA, a towed array emitting low-frequency sonar that is critical in detecting ultra-quiet diesel-electric submarines while they are still at a safe distance from our vessels.
- Finally, our language will add a national security exemption to the MMPA.

Some are already asking why DoD is again seeking to amend certain environmental laws and why is this important to readiness?

Stewardship of the environment is an integral part of our mission. The 25 million acres of land entrusted to us for military training is crucial to sending our young men and women to battle superbly prepared. This land's inherent nature – as a mountain forest, a wetland, a beach, or a desert – gives us the real-world platform to “train as we fight”. Our continued ability to train is directly dependent on our ability to sustain these environments, which are irreplaceable treasury hallmarks for us. As this country has continued to urbanize, this dual task of realistic combat training and environmental protection has become more and more challenging.

When the Administration submitted to Congress last year its legislative package asking for clarification of six environmental laws, it was wrongly asserted by many that the Department had asked that all of its activities be exempted from those laws. This is simply not true, then or now. Our proposals were deliberately and narrowly focused only on military readiness activities on operational ranges – and do not change in any way our responsibilities for environmental cleanup or pollution prevention for everyday activities on our active or closed installations.

We firmly believe the five remaining proposals are no less important now than they were last year. In our view, they remain a necessary component for addressing some of the many challenges to our training and testing ranges.

Why are these proposals so critical to our readiness mission? Let me briefly summarize four critical points. First:

- Loss of access to training or testing space: Conflicts with inflexible laws or rules curtail access. For example, deployment of the Surveillance Towed-Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar system, a key defense against ultraquiet diesel submarines, has been delayed for over six years, in large measure by the MMPA's definition of "harassment." Second:
- Increasingly unrealistic training options: For our unit Commanders, cumulative effects of workarounds to satisfy regulatory dictates are a "death by a thousand cuts" – DoD is

increasingly forced to restrict or relocate training and testing when encroachment affects our ranges. Both alternatives degrade the readiness of U.S. military forces. Third:

- Disproportionate compliance burden: DoD lands increasingly carry the conservation responsibilities for surrounding regions – At Camp Pendleton, proposed critical habitat under the Endangered Species Act would cover 57% of the base, including all 17 miles of the beach that is critical to training operations, largely a result of urbanization from Los Angeles and San Diego. The U.S. Fish and Wildlife Service's efforts to allow DoD greater flexibility through our Integrated Natural Resource Management Plans (INRMPs), instead of through critical habitat designation – an effort designed to better manage both its training mission and the protection of threatened and endangered species – is now being challenged in court. Fourth, and finally:

- Evolving legal interpretations raise future concerns: Military training activities are increasingly being scrutinized under industrial pollution laws designed for other contexts – the extension of laws and regulations never intended for application to military readiness activities. DoD's training and testing activities readiness activities at operational ranges could be significantly curtailed or forced to shut down if firing munitions is interpreted as a "release" under the Superfund law, as alleged by private litigants in a pending lawsuit.

DOD DIRECTIVE, "SUSTAINMENT OF RANGES AND OPERATING AREAS"

Range Sustainment is a long-term process, but one of utmost importance. Our efforts to address the encroachment concerns are therefore broader than just the RRPI legislative. An important accomplishment in our longer-term efforts is the recently completed DoD Directive, "Sustainment of Ranges and Operating Areas."

This new directive was signed by the Deputy Secretary of Defense for immediate implementation on January 10, 2003. This DoDD was developed as part of our overall comprehensive range sustainment strategy.

The Deputy Secretary of Defense tasked the development of this new directive with this guidance:

"...The Directive should assign responsibilities for range sustainability and require the Services to issue implementing directives, which specifically focus on long-term sustainability. Further, it should embrace 'working outside the fence' as an overall management approach, and emphasize the importance of partnerships with regulators, the public, and land owners."

In fulfilling these requirements, this Directive provides capstone-level guidance to DoD and the Services on overall policy for test and training range sustainment planning, management, coordination and outreach. As a Capstone, it is intended to serve as a guide in the development or revision of other directives with applicability to range sustainment.

Most importantly, the directive provides that range planning and management will identify range requirements for both training and testing, identify encroachment concerns and other inhibiting factors to the ranges, and develop responsive plans to address conflicts. It also calls for functionally integrated decision-making -- operator, environmental, legal and other installation/range offices or staffs. Coordination and outreach on sustainment issues that include off-range stakeholders is also directed, with a goal of promoting understanding of range management and use decisions and working with outside groups to consider their concerns and work cooperative to address shared concerns.

THE ROLE OF TECHNOLOGY

Complementing our policy efforts, we see a continuing role for technology as a means to achieve range sustainment. For over a decade the Department has invested in technology to address these issues. The results of these efforts are seen in the introduction of the lead-free "Green Bullet", the growing ability of the Navy to detect and track vocalizing whales, and the fielding of the first generation of advanced systems to detect and discriminate unexploded ordnance. However, much remains to be done. Through the Services and our two corporate environmental technology programs, the Strategic Environmental Research and Development Program (SERDP) and the Environmental Security Technology Certification Program (ESTCP), we are addressing range sustainment from a holistic approach. This approach is apparent in the diverse efforts that are ongoing that include:

- development of low-emissions, high-performance aircraft engines;

- development of in-situ remediation technologies for energetic materials including perchlorate;
- definition of the principles of ecosystem function for threatened and endangered species management and INRMP development;
- development of regional encroachment models to predict the impact of changes in land use “outside the fence”.

These and other technology development efforts are critical to the effective, sustainable management of our installations into the future.

COMMUNICATING WITH STAKEHOLDERS

The Department is working very hard to create a broad-based effort to address our encroachment concerns. This may well include legislative, regulatory, and administrative policies, as well as technological advances, but it should also include improving our communication with our stakeholders – national, regional and local. As our new directive emphasizes, it needs to include taking the concerns of our stakeholders into account when we are making range related decisions.

2002 LAND TRUST ALLIANCE NATIONAL RALLY

This past October, I had the opportunity to keynote the Land Trust Alliance’s (LTA) 2002 National Rally. This was a first for the Department of Defense. The LTA Rally provided

us an unique opportunity to explain the DoD mission, learn more about land trusts, and to explore better ways to partner with these organizations across the country – sharing a mutual goal to protect our natural resources while giving us the open space we need to train our young men and women to defend the freedoms all of us enjoy.

As the national umbrella organization for more than 1200 land trusts, LTA works for public policies that support open space efforts. The first LTA public policy principle is “Maintaining open land is good public policy; open space helps everyone”

The Department of Defense agrees with this and has, in fact, for many years been recognized as a leader in land and species conservation. As part of our national defense mission, we also defend and conserve the public lands and the natural resources that have been allocated and reserved for the purposes of the military. They have been entrusted to us by the American people. The Rally format allowed me the opportunity to introduce our accomplishments to many who knew nothing of our extensive stewardship program.

In addition to a separate panel discussion at the LTA Conference focusing on the Army’s significant Private Lands Initiative at Fort Bragg, I had the opportunity in my plenary remarks to highlight a few of our achievements:

- o In Crane, Indiana, the Naval Surface Warfare Center has won numerous conservation awards for work with the bald eagle and two of Indiana’s fourteen Bald Eagle nests are located on the base. These nesting areas were posted, buffered and then man-made

nesting platforms were built to encourage the species to make the Navy facility their home

- In Ohio, the Air Force conservation staff at Wright-Paterson Air Force Base, working with the Nature conservancy, has preserved the Huffman Prairie used by the Wright Brothers to perfect the first airplane. Today the prairie represents one of the best preserved remnants of tall grass prairie in the State of Ohio and the entire area is protected as both National Historic and National Natural Landmarks
- At the Barry Goldwater Training Range in Arizona, the Air Force has turned over 88,000 acres of land to the Bureau of Land Management for the Sonoran Desert National Monument
- At Coronado, California, the Least Tern population nesting had increased 600 percent and the Western Snowy Plover nesting has increased 300 percent under Navy stewardship.

The Land Trust Alliance Rally also provided a valuable opportunity to further develop relationships that will enable us to efficiently and effectively utilize the new authorities for working with local and state governments, as well as conservation organizations that Congress did enact last year as part of the 2003 National Defense Authorization Act for Fiscal Year 2003.

2003 DEFENSE ENVIRONMENTAL FORUM

In another important event, my office, along with Admiral Gaffney, President, National Defense University, co-hosted the inaugural Defense Environmental Forum. The Forum was held on February 4-5, 2003, at the National Defense University (NDU). The purpose of the Forum was to engage a cross-section of external stakeholders and Department of Defense personnel in a discussion of the Department's overarching challenge of balancing the twin imperatives of environmental stewardship and military readiness. The participants were asked to:

- Identify issues/problems/concerns related to balancing mission needs and environmental stewardship as well as root causes;
- Identify success stories and best practices for balancing mission needs and environmental stewardship; and
- Identify mechanisms that can be used or developed to address the identified issues/problems/concerns associated with appropriately balancing military readiness and environmental stewardship responsibilities.

Over 52 participants representing non-governmental organizations, the private sector, academia, the media, and Federal and state government, including DoD and Military Service personnel attended the forum.

Some of the Issues raised at the forum included:

Compatibility of Military Readiness and Environmental Stewardship

Encroachment from Sprawl

Our Proposed DoD Legislation

Partnering and Interagency Cooperation

Endangered Species Issues

Maritime and other Marine Issues

Management Opportunities for Addressing Sprawl

Since the purpose of the Forum was to engage in a discussion of the need to achieve a sustainable balance of military readiness and environmental stewardship, and to generate ideas on the means to achieve such balance, the comments of the participants have served to reinforce our understanding of the need for sustained stakeholder involvement. Final proceedings for the Forum are now being prepared for distribution to the participants. Initially, the Department has identified three primary topics that may provide the basis for future discussions:

- The impact of uncontrolled or poorly controlled urban development on military training activities, the management of military installations, and the communities surrounding

military installations, and identification of possible means of controlling or mitigating such impacts;

- The need to examine non-legislative, as well as legislative, means to address the Department's concerns stemming from the dual legal requirements related to the application of the Endangered Species and Sikes Acts to the management of the natural resources found on military installations; and
- The need to ensure protection of marine mammals while continuing the ability to use sound in national defense applications and in the general exploration of the oceans and seas.

As follow-up to the forum, we are now coordinating with The Conservation Foundation and the Department of the Interior's National Conservation Training Center, to convene a workshop this spring focusing on the Department's new "buffer lands" authority. This new authority, enacted this past December 2002, provides an additional tool allowing us to cooperate more effectively with local and State governments, as well as with conservation organizations, to plan for smart growth surrounding our military facilities. Consistent with what we have heard at events like the Land Trust Alliance National Rally and at this year's Defense Environmental Forum, we hope this workshop and other regional events will help us to more effectively use these and other tools in addressing mutual encroachment concerns.

QUANTIFICATION OF ENCROACHMENT

The final issue that wish to raise as a part of today's hearing concerns our ability to better quantify how encroachment affects our test and training mission. This has been an on-going criticism of our legislative effort as well as our broader range sustainment strategy – a concern raised as part of GAO's report on encroachment dated April 25, 2002. Because of these concerns and as part of the National Defense Authorization Act for Fiscal Year 2003, Congress directed the Secretary of Defense to develop a plan to address training constraints caused by limitations on use of our land, sea, and air resources.

As part of this requirement, DoD has recognized the need for better supporting data to substantiate our requests for encroachment relief. In response, the Under Secretary for Personnel and Readiness, has recently asked the Secretary of each military department to develop and submit specific information, to include:

- An assessment of the current and future training requirements of their respective Service;
- A report on implementation of a Service range inventory system;
- An evaluation of the adequacy of current Service resources to meet both current and future training requirements in the United States and overseas;

- A comprehensive plan to address operational constraints resulting in adverse training impacts caused by limitations on the use of, or access to, land, water, air and spectrum that are available or needed in the United States and overseas for training; and
- A report on, or specific plans for, designation of an office within each of the military departments that will have lead responsibility for overseeing implementation of the plan.

CONCLUSION

In closing Mr. Chairman, In 1990, then Secretary of Defense Richard Cheney stated, "Defense and the environment is not an either/or proposition. To choose between them is impossible in this real world of serious defense threats and genuine environmental concerns."

The mission of our men and women in uniform is to protect the interests of the United States in times of crisis or conflict. Our nation's capability to test new equipment and train troops for combat cannot be taken for granted. The ultimate objective of such training and testing is to deter conflict when possible, win wars when necessary, and bring our troops home safely.

It is, therefore, a primary DoD mission to provide realistic testing and training for U.S. Armed Forces. DoD is committed to sustaining U.S. test and training capabilities in a manner

that fully satisfies that military readiness mission while also continuing to provide exemplary stewardship of the lands and natural resources in our trust.

As Vice President Cheney stated – this is not an either or proposition. Training is critical to victory and protecting our environment is important to all Americans. Neither can be sacrificed.

Mr. Chairmen, we sincerely appreciate your support on these important readiness issues I look forward to working with you on our Readiness and Range Preservation legislation.

Thank you.

Written Statement of

Mr. Nelson F. Gibbs

Assistant Secretary for Installations, Environment &

Logistics

United States Air Force

before the

House Armed Services Committee,

United States Congress

2003

Introduction

Committing this Nation to combat is arguably the hardest decision the President and Congress will have to make. I know we all hope for peace, but we also all understand that this Nation's military must be prepared for war. Military readiness is essential to the security of the United States, to the protection of the lives and well-being of our citizens, and to the preservation of our freedoms, economic prosperity, and our environmental heritage. In fact, military readiness in itself is the best defense against the frightening environmental threats posed by the effects of war and terrorism.

The ability of the Air Force to effectively train, test, and operate requires access to a finite set of natural and built resources. Our installations, ranges, and airspace are critical national assets that allow the Air Force to test equipment, develop new tactics, and train our forces to be combat-ready. National security requirements must be able to compete fairly and effectively with other important needs or users for valuable and sometimes scarce resources.

The Air Force is proud of its dual success at protecting the environment. Defense vigilance has kept our shores largely free of the environmental damage conflict imposes. Defense environmental practices ensure resources entrusted to the Air Force are sustained and restored to the condition needed for future generations. The success of our environmental resource management is best evidenced by the increasing competition we face for their use. Our lands offer refuge to wildlife habitat and naturally attract species as urban development destroys neighboring habitat. Further, as development approaches our boundaries, we find ourselves in greater competition for clean water and clean air resources. This competition, coupled with different interpretations and extensions of

environmental laws and regulations, is gradually but perceptibly lessening the military's access to and use of these resources. This phenomenon often referred to as "encroachment" or "resource denial" will continue to restrict our ability to test and train realistically in the future.

Addressing Encroachment

Air Force resources are being denied or encroached upon in several areas; if this trend continues it will stress our ability to maintain readiness. What exactly do we mean when we say we are being encroached upon?

A. We cannot use land or airspace assigned to the Air Force for installations and ranges to their full capability.

- Currently, 78 federally listed threatened and endangered species occupy substantial portions of the approximately nine million acres of Air Force property for which the Air Force provides various levels of habitat and species protection. On the Barry M. Goldwater Range (BMGR) in Arizona we track the movement of the endangered Sonoran Pronghorn. The DoD flies about 70,000 sorties yearly on the BMGR and our biologists monitor the BMGR target areas for pronghorn movements. If they are spotted, the live missions projected for that area are diverted or canceled.

- In spite of Integrated Natural Resource Management Plans being in place, four critical habitat designations are under consideration by the Fish and Wildlife Service; each could limit or circumscribe current or future mission needs. For

example, at Travis AFB, a proposed critical habitat designation, if made final without any changes, could restrict new activities throughout the installation.

B. Consideration related to air emission may supercede readiness as a key driver in basing and operating decisions.

- For air quality, 59 of our installations are currently located in areas that do not achieve minimum air quality standards ("non-attainment areas"), while new standards may affect an additional 27 bases.

- Bases operating in areas not attaining air quality standards may not be available as alternatives for new missions irrespective of their operational value. In addition, new weapons systems may require added emission capacity that is difficult to acquire or arrange at the time of basing decisions, making conformity determinations difficult to do before mission decisions are made.

C. Urban development that takes place outside the fence impacts military readiness on the installation or range.

- Residential development forced Nellis AFB to cease using the southern departure for live ordnance missions.

- To ensure they could manage their operational risk, Nellis AFB acquired 417 acres of land under the northern departure corridor at the cost of \$38 million.

D. DoD is losing bandwidth at a time when precision weaponry requires greater telecommunications capacity to operate. Over the past decade, the Federal government has lost access to over 235 MHz of bandwidth -- due primarily to International and Congressionally mandated reallocations.

The Air Force Encroachment Strategy

In the past, the Air Force dealt with these encroachment issues by modifying operations (workarounds), financing mitigation, or both. As resource competition continues to grow, managing these operational and financial risks without compromising our mission becomes increasingly difficult and costly. The Air Force has a four-prong strategy to address encroachment issues:

1. Identify and quantify the resource base needed to perform the Air Force mission, and quantify the readiness impairments resulting from resource denial (encroachment) including joint use of training facilities managed by other DOD components. The Air Force is developing a model that will more precisely identify natural and physical resources, and associated regulatory requirements, needed to conduct readiness activities to better inform decision makers both within the Air Force and among our community and regulatory partners.
2. Institute dialogue with other federal resource management agencies to develop regulatory or administrative improvements that can relieve military resource encroachment. The Air Force continues to work with the Department of Interior, the Environmental Protection Agency, and the Department of Commerce (National Oceanic Atmospheric Administration) to better communicate and develop effective resource management techniques and alternatives to prevent encroachment from occurring.
3. Communicate with states, tribes, local governments, and interested organizations regarding how unintended consequences of resource management programs can impair

military readiness. Using resource modeling and other informational techniques, we will continue outreach and communications with partners and stakeholders.

4. Explore the possible need for statutory modifications to prevent unintended impact to military readiness from resource denial or degradation. For example, with regard to radio frequency spectrum, we thank you for your assistance in crafting prior years' National Defense Authorization Acts to ensure the DoD maintains military capability despite pressures to reallocate spectrum for non-federal use. We ask for your continued support to ensure availability of this vital resource.

The Air Force strongly endorses making necessary and appropriate adjustments to the implementation of environmental laws to address encroachment that is negatively impacting military readiness activities. The Readiness and Range Preservation Initiative (RRPI) will make focused legislative changes that protect access to our operational resources while continuing to protect the environmental resources so valuable to this Nation.

Last year Congress adopted three of the eight provisions of the original iteration of the RRPI. We thank you for your assistance with the Migratory Bird Treaty Act and two land transfer authorities. However, we still need your support with the remaining provisions to ensure our future readiness. This proposal is narrowly tailored to encompass only military readiness activities and not other DoD activities, as some would like you to believe. Our goal through the RRPI is to prevent unintended extension of regulations that deny or degrade our access to necessary resources.

We support the RRPI. Operational readiness demands that the Air Force be able to continue using Integrated Natural Resource Management Plans in lieu of critical habitat designation under the Endangered Species Act. Failure to have this ability could result in premier training areas, such as Barry M. Goldwater Range, facing designations as critical habitat for the species that currently occupy those ranges, limiting their availability for critical readiness activities. We need time extensions to comply with State Implementation Plans in the Clean Air Act so we can plan moves of missions and systems to installations based on operational needs and still ensure we meet clean air requirements. The Resource Conservation Recovery Act (RCRA) needs modification to confirm existing federal and state policy that munitions deposited on an operational range are not considered a solid waste. And the definition in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) needs to be modified to confirm that firing a weapon on an operational range is not a "release." We need a clear and biologically supportable definition of harassment that also passes the common sense test under the Marine Mammal Protection Act. The Air Force supports these requests as being reasonable to ensure that military readiness is not compromised as we carry out our environmental protection responsibilities.

Conclusion

The goal of every Air Force leader is not to send our troops into a fair fight. We want to have overwhelming superiority. We currently have that edge because we have the world's best testing and training which is accomplished from the world's best installations on the world's best ranges. With your help, we can begin an improved

process to manage the competing needs or uses for these resources to ensure environmental protection and military readiness in the decades to come.

I want to thank the committee for allowing the Air Force to share its concerns over the growing issue of encroachment. The Air Force understands its obligation to identify competing human and environmental needs and to establish compatible uses of resources as needed or possible. However, it also recognizes it has a unique need to perform a military mission to protect those very same resources from harm by powers outside the United States who may not share our values regarding life and freedom. The multi-billion dollar effort in Defense programs to sustain, protect, and restore the environment will continue to achieve lasting successes in all areas of protecting human health and the environment. The Air Force appreciates the Committee's support so that we can sustain environmental resources and still train and prepare the men and women of the Armed Forces.

RECORD VERSION

STATEMENT BY

MR. RAYMOND J. FATZ
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ENVIRONMENT, SAFETY AND OCCUPATIONAL HEALTH

BEFORE THE

COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON MILITARY READINESS
UNITED STATES HOUSE OF REPRESENTATIVES

FIRST SESSION, 108TH CONGRESS

ON THE
VIEWS OF THE ARMY REGARDING
ENVIRONMENTAL LEGISLATIVE PROPOSALS

MARCH 13, 2003

NOT FOR PUBLICATION
UNTIL RELEASED
BY THE COMMITTEE ON
ARMED SERVICES

Mr. Chairman and distinguished members of the Committee, I thank you for the opportunity to convey to you how the Fiscal Year 2004 Defense Department Readiness and Range Preservation Initiative (RRPI) legislative proposals will benefit the Army's mission.

Vince Lombardi once said, "Practice does not make perfect. Only perfect practice makes perfect." That is why the Army makes every effort to ensure that the training conditions on our ranges and training lands mirror that of combat as closely as possible. It is not only the number of miles an individual or crew maneuvers in their combat vehicle or the number of times soldiers pull the trigger on their weapon that makes them ready, although these things are important. For the Army, the "perfect practice" to which Coach Lombardi referred, consists of a combination of repetitive battle drills in realistic training scenarios and under realistic combat conditions. Only when the repetition of these tasks occurs as part of realistic, multi-echelon training events and in realistic battlefield conditions does training meld soldiers and equipment into the best fighting force the world has ever seen. Training in unrealistic conditions engrains in soldiers unacceptable, unwarranted, and dangerous responses when the soldiers are in real situations. Overly artificial training conditions can actually teach and reinforce improper techniques that must be un-learned before true combat proficiency can be attained.

Incremental decreases in training realism have contributed to a cumulative reduction in training effectiveness. As the practice of Army units becomes less perfect, so does the combat performance of those units. Imperfect combat performance means soldiers' lives. The Army must train the way it intends to fight, because our soldiers will certainly fight the way that they have trained. This is why the subject of environmental encroachment is so important to the Army.

The Army has endeavored to take care of the 16.5 million acres America has entrusted to us. But America also entrusts us with an even more precious resource –

her sons and daughters. We are committed to providing our soldiers with the most realistic training possible, to ensure they come home to their families.

Recent trends limiting our access to quality training conditions give us cause for great concern. Our ability to use our ranges and training lands is being increasingly constrained. As the Army continues to improve its weapons systems and transforms to the Stryker Brigades, the combat training footprint for these improved Combat Teams will be greater than that currently required for existing infantry brigades. This continues a trend that we have seen since WWII, driven largely by increased force mobility and weapon system range that demand even more training land. If enacted by Congress, the legislative proposals within the DoD Readiness and Range Preservation Initiative (RRPI) will assist us in our continuing struggle to achieve an appropriate balance between maintaining military readiness and protecting the land and resources America entrusts to us.

We appreciate the work the Congress has already done in this area, particularly in the FY03 Defense Authorization Act, to give the military departments the authority to establish buffer zones around our ranges to manage encroachment and ensure compatible land use. That legislation was a significant step in the right direction, but there is more work to do in this area. If enacted by Congress, the legislative proposals in the FY 04 DoD RRPI will be a major step forward in providing the legislative clarification we require to continue to provide the flexibility needed to conduct realistic training and protect the land and resources America entrusts to us.

The Army's primary encroachment concerns have been training restrictions that stem from the expanded application of environmental regulations to the use of military munitions and the regulatory requirements for the management and protection of habitat that may or may not be occupied by threatened or endangered species.

Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund

The amount of live-fire exercises in the Army cannot be reduced without serious degradation to readiness and the concurrent increased risk to American soldiers. The amount of live training that individual soldiers and units are required to complete is based on the premise that certain skills are perishable and must be periodically exercised. In other words, to be effective with a certain weapon system, the soldier must regularly fire the weapon system a certain number of times. The Army has established standards that identify the minimum number of times and specific firing events that a soldier must complete to achieve a given level of proficiency. Many ranges operate at maximum capacity so that units can train to standard. Limitations on training facilities inevitably cause a reduction in live training, the incremental and cumulative effects of which inevitably lead to a decrement in proficiency.

Under the current statutory language, environmental statutes, such as the Resource Conservation & Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), can be used to constrain or shut down live-fire training and testing by establishing prerequisites to training or requiring investigation and cleanup of munitions and munitions constituents on operational military ranges. This would make it nearly impossible for the Army to fulfill its national security mission.

The RCRA and CERCLA provisions of the RRPI seek to clarify Congress' original intent in the application of these statutes to military live-fire training and operational military ranges. Historically, environmental regulatory agencies have used great discretion in the application of RCRA and CERCLA to operational ranges. They recognize that these facilities are extremely valuable national assets and the training conducted on them is critical to national security. They also recognize that these statutes are designed to clean-up the impacts associated with past practices at

industrial or waste management facilities that are being put to other uses or to respond to accidental releases or spills of hazardous substances, and not at the military's operational ranges. For these reasons, the EPA has never required a RCRA corrective action to respond to the effects of military training on operational ranges. Environmental regulators have only used CERCLA authority in a very small number of cases on operational ranges and only in cases where they have determined the conditions pose an imminent and substantial endangerment to human health or the environment. The RRPI provisions seek to codify this historic practice and prevent expanded application of these laws beyond Congress' original intent.

The Nation's environmental consciousness increased tremendously in the closing decades of the Twentieth Century, resulting in a multitude of federal, state, and local environmental statutes and requirements. The development of our current environmental statutes and regulations addressing waste management, pollution elimination, and clean up of contamination did not take into account or foresee their application to military training lands and military weapon systems. Regulators themselves are vulnerable to citizen suits for not vigorously applying these and other environmental laws to munitions and munitions constituents on operational ranges.

While it is possible under some of the environmental statutes to seek national security exemptions – often at the Presidential level – they are narrowly tailored to a specific site, regarding a specific issue, and for a limited time, e.g., RCRA provides for a 1 year Presidential exemption, renewable thereafter. The readiness activities we are concerned with are not “one-time” events. They are part of the day-to-day training regimen of our soldiers, and it is simply unrealistic to expect the military to request exemptions for training that must occur on a regular basis. Additionally, these statutes contain few practical methods for considering the unique impact that enforcement has on military ranges and military readiness. In our view, a clarification of the statutory framework applicable to military training operations is an appropriate manner in which to address the issue.

The Army at Fort Richardson, Alaska, is currently engaged in a lawsuit where the private party plaintiffs allege violation of RCRA, CERCLA, and the Clean Water Act (CWA) associated with firing munitions at Eagle River Flats (ERF) range. The RCRA allegation is that munitions fired into or onto ERF, an operational range, are subject to state solid wastes requirements under RCRA. If munitions used for their intended purpose are considered statutory solid waste subject to RCRA's waiver of sovereign immunity, the Army could be forced to seek an operating permit and to perform corrective action or remediation of ERF. Live-fire training during the remediation would be impossible, and the only mortar and artillery impact area at Fort Richardson would be unavailable to training. The CERCLA allegations are that the act of firing munitions onto an operational range and the continued presence of those munitions on the range constitute a release of hazardous substances requiring reporting, characterization, and remediation. If the court agrees with the plaintiff, then live-fire training and testing operation at every Army range (400+ sites) could be subject to CERCLA response requirements. These findings would not only dramatically impact the readiness of the 172nd Infantry Brigade in Alaska, the largest infantry brigade in the U.S. Army, but the entire DoD. Further lawsuits could compel EPA and state regulators in the rest of the U.S. to enforce the same standards on other military ranges. Live-fire training would be severely constrained throughout the Department, and military readiness would decrease dramatically.

Live-fire training is essential and is often the capstone training event of a unit's training cycle. Military training is inherently dangerous, and the United States has set aside areas to use for this specific purpose and to insulate the public from the dangers associated with this training. These set aside areas are DoD's operational ranges. They are crucial to maintaining national security and comprise just over 1% of the U.S. land mass. The activities conducted on this land are not carried out for profit or gain, but to ensure the security of the United States and to ensure that the young men and women of the U.S. military are ready to do what is asked of them. The relatively small portion of the U.S. that is set aside to ensure military readiness provides tremendous

benefit to the entire Nation and the necessary training and testing conducted on this land should be protected.

While we have serious concerns with regard to the training implications of these actions, we are also mindful of the public's concern over potential environmental impacts. We are aggressively developing and implementing an effective, comprehensive range sustainment program. As part of this effort, we are implementing a number of programs to better understand and manage the environmental implications associated with live-fire training.

The Army is conducting Regional Range Studies. They are designed to gather credible data on the true environmental impact of live fire training and weapons testing. The concept is to study ranges at different installations representing a wide variety of climatic, geologic, and ecological settings. The program includes the development of field assessment protocols, field studies, and a lessons learned report that will include a tool to prioritize future range assessments. Soil, surface water, sediments, groundwater, and vegetation are sampled and analyzed for explosives and metals related to live fire. Small mammals are also studied to determine ecological impacts. Field protocols are being developed and will be continually refined over the course of the Regional Range Study.

The Army is conducting studies on the fate, transport, and effects of military compounds. The project is aimed at identifying research requirements associated with the fate, transport, effect, and toxicology to assess the impact of ordnance on the environment. The major objective of this project is to identify available data for modeling of chemicals typically associated with munitions and their respective emissions and to compile toxicity benchmarks for these chemicals.

The Army is characterizing the scrap metals generated as byproducts of live-fire training. Testing and training ranges produce scrap products that are regularly removed from the range as part of maintenance operations. Much of the range scrap produced

contains valuable metals that can be recycled, and some of this scrap may contain hazardous residues that are handled in compliance with state and Federal requirements. In response to issues associated with the removal of range residue, the Army is chemically characterizing this material and developing management practices for the materials generated from the use of munitions at Army troop training ranges.

We are also investing in Research and Development to eliminate potential harmful compounds from our ammunition throughout their lifecycle. The most notable of these efforts are the Army's "green bullet" and our efforts to eliminate potentially harmful dyes from smoke grenades that are critical to Army training. The Army has developed a substitute non-toxic material (tungsten/tin or tungsten/nylon) for the lead core bullet of our 5.56mm (M-16) round. The ballistics of the round are identical to the lead-core round, and we have authorized the procurement of about 5 million rounds this year. A similar effort is underway for our other small arms rounds including 7.62mm and 9mm rounds. Recognizing that two of the Army's smoke grenades contained potentially harmful substances; we developed alternative materials and are currently testing the products so the alternative formulations can be phased into production.

The Army strongly supports the RRPI RCRA and CERCLA proposals. These proposals clarify that live-fire training does not constitute disposal of solid waste or releases of hazardous substances, as these terms are used in RCRA and CERCLA. These proposals seek to codify the existing practice by the Environmental Protection Agency and state environmental regulatory agencies and remove ambiguity currently in the law. These proposals confirm that the clean up of military munitions is not required so long as munitions remain on operational ranges where they were fired. The policies governing clean up of munitions located off an operational range and munitions causing an imminent and substantial endangerment to health or the environment on-range remain unchanged – as would policies governing clean up of former ranges and other defense sites. These provisions do not diminish the Army's responsibilities to clean-up formerly used defense sites or to protect the environment from potentially harmful impacts. These provisions clarify and affirm existing practices and ensure that military

ranges that have been set aside for military use in training and testing continue to be available to the soldiers who need to train for combat.

Threatened and Endangered Species and Critical Habitat

The RRPI proposal related to the Endangered Species Act and Critical Habitat seeks to codify the U.S. Fish and Wildlife Service (USFWS) policy of allowing the existence of adequate plans, in our case, Integrated Natural Resources Management Plans (INRMPs), to obviate the need for designating Critical Habitat. The Sikes Act requires us to prepare plans that integrate the protection of natural resources on military lands with the use of military lands for military training. The USFWS and the State wildlife agency are consulted in the preparation of such plans and their agreement is sought on the final plan.

Army lands are host to 172 federally listed species on 99 installations. The USFWS has designated critical habitat on 14 installations to include Fort Lewis, Washington and Fort Irwin, California – two installations that are critical to maintaining the war-fighting readiness of the Army. At Fort Lewis, 70 percent of the training land is designated as critical habitat for the threatened Northern Spotted Owl, and yet the Northern Spotted Owl is not even present anywhere on the installation.

Designation of critical habitat on Army installations adds management costs and reduces the flexibility of use of land on which we train. New designations require installations to enter into consultation with the USFWS or National Oceanic and Atmospheric Administration - Fisheries and limit, cease, or slow the start of training activities while consultation is conducted. Each time the Army proposes an action that may adversely modify the habitat, we must enter into consultation even if species do not occur within the affected habitat. Consultation may result in the imposition of land use restrictions on military lands. However, large scale programmatic consultations can address most of the training needs of an installation, potentially precluding the need for separate consultation on individual actions.

At the National Training Center (NTC) in Fort Irwin, California, 22,000 acres are designated as critical habitat for the Desert Tortoise. This designation has effectively eliminated maneuver training on the 22,000 acres and reduces the amount of training that can be conducted on the installation by limiting maneuver training to only one area – the central corridor. We need two corridors to conduct the kind of training required on the modern battlefield. After almost 20 years of effort, the expansion of the NTC and reopening of these 22,000 acres to training are nearly a reality. But these efforts come at a cost. In 2000, Congress authorized the expenditure of up to \$75 million to acquire and manage additional land for preservation of and mitigation measures for the Desert Tortoise and Lane Mountain Milkvetch. We are in the process now of working with FWS and state regulators to define the scope of these requirements. Only after we implement the mitigation measures will it be possible for the Army to use these areas.

In addition to the Army installations where critical habitat has been designated, the USFWS has proposed to designate habitat for 146 additional species in Hawaii. This proposal affects 7 Army training facilities: Pohakuloa Training Area (10 species); Kahuku Training Area (10 species); Kawaihoa Training Area (29 species); Makua Military Reservation (31 species); Schofield Barracks East Range (17 species); Schofield Barracks Military Reservation (34 species); Ft. Ruger (HIARNG lands at Diamond Head Crater)(1 species). I should also note here that areas proposed as critical habitat are not always contained in the final critical habitat designation. Before making a final decision, the USFWS will consider the military's input regarding impacts to military readiness, in accordance with section 4(b)(2) of the ESA.

The Endangered Species Act places a huge responsibility on Federal agencies to conserve and help recover listed species. The responsibility is not diminished significantly by excluding federally managed lands from critical habitat designation. Nor is the conservation of listed species significantly enhanced on federal lands by critical habitat designation.

The Red-Cockaded Woodpecker (RCW) in the Southeast United States gives us a great example of successful conservation without critical habitat designation. The

species occurs on nine of our installations. Six are major training installations (Fort Bragg, North Carolina; Fort Stewart, Georgia; Fort Benning, Georgia; Fort Polk, Louisiana; Fort Jackson, South Carolina; and Fort Gordon, Georgia).

During the early 1990's, the RCW presented significant restrictions to Army training. Restrictions within 200-foot buffers around each cluster of cavity trees included reduced bivouacking or occupation; no use of camouflage; no weapons firing other than 7.62mm and .50 cal blank (e.g., no artillery, rockets, etc.); no use of generators, no use of riot agents; no use of incendiary devices; no use of smoke grenades; and no digging of tank ditches or fighting positions.

In the mid-1990's, the Army and USFWS worked out guidelines that gave the Army greater flexibility and fewer restrictions if the Army developed and carried out effective management plans for RCW. Today, the Army has accomplished six of the nine plans (the remaining three are in progress); accomplished research establishing scientific documentation that military impacts on RCW are not as significant as previously believed; increased monitoring of the species; improved RCW habitat; and perfected methods of translocating birds to establish new reproductive pairs. The Army has invested \$48 million in RCW management since 1990. The net result of all this effort is that RCW populations have increased on all Army installations, and, on the six installations with plans, the restrictions on training have been reduced. This was all accomplished without critical habitat designation or even the threat of critical habitat designation.

A similar story can be told about the bald eagle. The bald eagle was down listed from endangered to threatened in 1995, and, in 1999, it was proposed for delisting altogether. The Army has bald eagles on 37 installations, and the Army, along with our sister services, has contributed significantly to bald eagle conservation. There is no critical habitat designated for the bald eagle, yet it is on the road to recovery.

The Army has been extremely successful protecting endangered species. Installation programs to work with adjacent landowners to achieve mutual conservation goals are recognized as models for balancing military mission with species conservation

on a regional level. It is our policy to develop specific Endangered Species Management Plans for each listed species in consultation with the USFWS and National Oceanic and Atmospheric Administration – Fisheries. We regularly consult with these two agencies under Section 7 of the Endangered Species Act to fully consider the effects of military activities on listed species. These programs are a testament to the Army's commitment to balancing the management of the land entrusted to our care to meet the requirements of both the military mission and protection of threatened and endangered species.

Put succinctly, the designation of critical habitat on Army lands adds little or no conservation benefit to imperiled species if the Army takes an active role in conserving threatened and endangered species through development and implementation of INRMPs, Endangered Species Management Plans, and other management actions. As a result, the Army has repeatedly demonstrated that the adverse consequences to Army operations resulting from designation outweigh the relatively minor benefits derived from critical habitat designation.

The USFWS has chosen not to designate critical habitat on a number of installations over the past few years: Fort Carson, CO - Mexican Spotted Owl; Camp San Luis Obispo, California Red-legged Frog; Camp Parks Reserve Training Area - California Red-legged Frog; Camp Grafton - Piping Plover Northern Great Plains Population; Fort Riley - Topeka shiner (not yet final - but expected); Camp Roberts - Purple Amole; Fort Hunter Liggett - Purple Amole; and Santa Cruz Armory - Santa Cruz Tarplant.

By allowing INRMPs to obviate the need for critical habitat designation, the USFWS allows military installations flexibility in the management of their natural resources to support the military mission while providing for the protection of endangered species. However, a federal district court in Arizona recently decided USFWS's reliance on management plans to provide adequate habitat protection in lieu of designation of Critical Habitat is unlawful. This court decision reinforces the need for Congress to make law that explicitly supports this common sense approach. Absent this clarifying

legislation, The Army is very concerned that this single court decision could be used (indeed, abused) to call into question all of the instances where critical habitat has been avoided based in part on the existence of an INRMP.

The Army strongly supports the RRPI legislative proposal that allows the existence of an INRMP, required under the Sikes Act and coordinated with the USFWS, to preclude the need to designate critical habitat. We encourage the Congress to enact this proposal. It has been a successful method of managing endangered species habitat at a number of Army installations, but the Fish and Wildlife Service is facing challenges in court for the practice. INRMPs allow the Army to take a holistic approach to managing natural resources on its lands. Designation of critical habitat adds little or no benefit to species conservation, imposes substantial consultation burdens, and opens up Army lands to the potential for additional land use restrictions. INRMPs strike the necessary balance and integrate military training needs with natural resources management practices to ensure that both imperatives are met - national defense and species protection. Management under an INRMP, in lieu of critical habitat designation, allows Army commanders increased flexibility to use the land on the installation to meet changing mission needs.

Clean Air Act

The RRPI proposal affecting the application of the Clean Air Act to military training seeks a 3-year window for new operations to come into conformity with State Implementation Plans. As the Army transforms and fields the new weapons systems that will power the Stryker Brigade Combat Teams and the Objective Force, we request this nominal consideration so we can develop methods of compliance that do not cause unacceptable training impacts.

We recognize that the RRPI Clean Air Act provision is extremely valuable to our sister Services and will assist them in making and managing stationing decisions for their fighter and bomber aircraft. In the joint theater in which we fight wars, we

recognize that anything that affects the ability of the Navy and the Air Force to conduct realistic training operations is affected directly affects the Army.

Marine Mammal Protection Act

DoD seeks to clarify the definition of the term "harassment" within the Marine Mammal Protection Act (MMPA) to make it more consistent with what we believe was Congress' original intent. Although the Army has not identified any specific training constraints associated with application of this statute to Army operations, we believe it is a common sense and important modification for all services. This provision of the RRPI is extremely valuable to the Navy and, as I stated earlier, will impact the services' abilities to engage in complex joint operations.

Balancing Military Readiness with Environmental Stewardship

The Army's effort to preserve and protect effective training and testing has three components

1. Obtain resources to implement the Army's Sustainable Range Program (SRP). SRP is the foundation for sustaining live fire and maneuver training and the environment on our ranges. The objective of SRP is to maximize the capability, availability, and accessibility of ranges and land to support doctrinal training and testing requirements. SRP is based on three tenets. First, develop and maintain information excellence to have complete data on all aspects of our ranges, their operational characteristics as training facilities, their physical characteristics as real property, and their characteristics as part of the natural and cultural environment. Second, apply integrated management across the four disciplines that directly affect ranges: range operations and modernization; facilities and installation management; explosives safety; and environmental management. Third, establish an outreach campaign to inform decision-makers and the community and ensure that their concerns are identified and addressed. In this way we will improve public understanding of why the Army must conduct training and testing and how we are moving to a more sophisticated

management approach. As we have in the past, the Army will continue to improve range operations, range modernization, state-of-the-art land and resource management, research on munitions effects and management of unexploded ordnance, and public outreach.

2. Support and foster cooperation among regulators and the military, emphasizing the need to balance military readiness concerns and environmental regulation. The Army believes that Congress should continue to recognize that the training required for Army readiness is a positive societal good and a legal mandate.

3. Seek needed changes to laws and regulations: The Army advocates an environmental regulatory framework for military facilities that recognizes their uniqueness and allows for successful and protective environmental management. The lack of clarity in regulatory authorities and standards in existing laws limits the Army's ability to plan, program, and budget for compliance requirements.

CONCLUSION

The Army is committed to its responsibility as an environmental steward for the 16.5 million acres America entrusts to us. However, we are also obligated to provide our soldiers with the most realistic training scenarios possible to fully prepare them for the rigors of war. Since the Army will always require land to train, it cannot afford to ignore its environmental responsibilities on that land.

Unless we can resolve several issues at our key training areas, we face the very real possibility that we will lose some of our critical training areas or, at a minimum, we will be forced to deny our soldiers the opportunity to participate in the number and kind of exercises required to retain perishable skills.

For 227 years, the Army has kept its covenant with the American people to fight and win our Nation's wars. In all that time, we have never failed them, and we never will. Building and maintaining an Army is a shared responsibility between the Congress, the Administration, those in uniform, and the American people. Working with Congress, we will keep the Army ready to meet the challenges of today and tomorrow.

Thank you, Mr. Chairman and distinguished members of the Committee for allowing me to appear before you today. I look forward to our continued dialogue and action on these important issues.

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ARMED SERVICES COMMITTEE

STATEMENT OF
WAYNE ARNY
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND FACILITIES)
BEFORE THE
SUBCOMMITTEE ON READINESS
OF THE
HOUSE ARMED SERVICES COMMITTEE

13 MARCH 2003

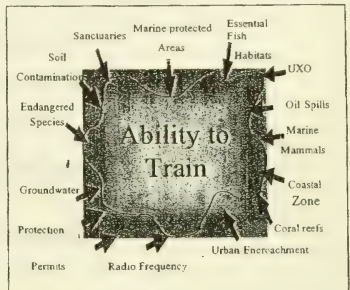
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ARMED SERVICES COMMITTEE

Mr. Chairman and members of the committee, I am Wayne Army, Deputy Assistant Secretary of the Navy (Installations and Facilities). Thank you for this opportunity to share my views regarding the growing negative effects of encroachment on military readiness activities. I appreciate your attention to this vital topic, which is of great importance to our national security and our natural environment today and into the future.

Maintaining Military Readiness

Maintaining the military readiness of our forces is the highest priority of the Department of the Navy. Unfortunately, that is becoming increasingly difficult because over time, a host of factors like, urban sprawl, increasing regulation, and litigation, have cumulatively diminished the Department of the Navy's ability to effectively train our personnel and test our weapon systems. Our own efforts to accommodate these factors, although reasonable when viewed on a case by case basis, have only added to the overall imbalance between national defense and environmental protection - an imbalance that, if allowed to continue will cripple our ability to train effectively and efficiently.

I have flown combat missions as a Naval aviator earlier in my career. I know first hand how important realistic training is in preparing to execute your assigned mission while ensuring your safe return. I have two sons on active duty in the Navy, both of whom have flown combat missions, and are preparing for a possible war at this very moment. They have also told me how important it is to be exposed to realistic training situations, even with the tremendous advances in simulation technologies.



Before this nation sends its most valuable asset - our men and women, our sons and daughters - into harm's way, we owe it to them and the American public to prepare them as best as we can to fight, survive and win. That starts with realistic and comprehensive training with the best equipment available.

The changes that the Department of Defense propose in the Readiness and Range Preservation Initiative legislative proposal for consideration by this Congress will enable us to slow new encroachment on ranges; ensure that good science is the basis for evaluating the effect of military readiness activities on our

natural resources; and provide flexibility in achieving workable solutions to control air pollution and the release of hazardous substances. Allow me to describe the need for each part of this legislative proposal in greater detail.

Concerns With The Endangered Species Act (ESA)

Military bases and ranges represent some of the few remaining undeveloped large tracts of property, and are being looked at more and more by federal and state regulators as a solution for difficult and costly conservation needs. Allowing Integrated Natural Resource Management Plans to be used in lieu of designating critical habitat would help slow future encroachment on military training ranges. For example, U.S. Fish and Wildlife Service proposed in calendar year 2000 to designate critical habitat on approximately 56% of the 125,000-acre Camp Pendleton and 65% of the 23,000-acre Marine Corps Air Station Miramar. The Marine Corps worked with the U.S. Fish and Wildlife Service to develop a scientifically and legally based policy that precluded the need to designate critical habitat on Miramar, and most of Camp Pendleton. This U.S. Fish and Wildlife Service policy recognized that Marine Corps Integrated Natural Resource Management Plans, developed in coordination with them, can provide the special management attention necessary for endangered species, precluding the need to designate critical habitat. Special interest groups, however, challenged the U.S. Fish and Wildlife Service's final rule in court. With the consent of the court, the U.S. Fish and Wildlife Service withdrew their final rules. They are required by the court to issue a draft rule in April 2003, and are currently reconsidering critical habitat designation.

The U.S. Fish and Wildlife Service has been applying this policy to other federal agencies with acceptable natural resource management plans. For example, they applied it to a Forest Service management plan on lands that are habitat for the Mexican Spotted Owl. In January 2003, a federal district court in Arizona held that the U.S. Fish and Wildlife Service's policy, as it was applied to the Forest Service management plan, was "nonsensical" and "purposefully unlawful." The Readiness and Range Preservation Initiative includes a provision that would codify current U.S. Fish and Wildlife Service practice. Given recent judicial opinions, codification is necessary to confirm for the courts that this policy is lawful. Absent the passage of this specific provision, environmental litigation may yet result in over 65% of Marine Corps Air Station Miramar and 56% of Camp Pendleton to be designated critical habitat.

Concerns With The Marine Mammal Protection Act (MMPA)

The need for legislative change as a means of sustaining military readiness was demonstrated further when a court restricted the use of a new low frequency active sonar system, known as SURTASS LFA. This sensor was developed to counter the threat of quiet diesel submarines deployed by our

adversaries, both real and potential. The Navy undertook a large-scale scientific research program to minimize the potential injury to marine mammals. The Navy worked closely with the National Marine Fisheries Service, the federal regulatory agency responsible for the protection and preservation of marine mammals, to develop mitigation measures so that marine mammals would not be injured. An independent panel of scientists conducted tests, which were thoroughly analyzed, subjected to peer review, and approved through a public rule making process. Based on this analysis, the Navy and National Marine Fisheries Service concluded that the system would have little impact upon marine mammals. Yet a federal judge made a preliminary determination pending a final decision on the merits that the MMPA and ESA would not allow the Navy to deploy the sonar system in the manner the Navy had determined was needed. The judge based this determination in part on a number of key terms including "harassment" as it is used in the MMPA, "small takes" as it is used in MMPA regulations, and "incidental take" as it is used in the ESA. The court ordered the Navy to confer with plaintiffs over possible restrictions on deployment of SURTASS LFA until the final hearing on the merits of the case, currently scheduled for June 2003. Following these discussions, the court issued a preliminary injunction restricting the Navy's use to an area in the western Pacific between Japan and Guam.

In addition to the decision to restrict deployment of the SURTASS LFA system, two other recent decisions by different federal district courts have stopped scientific research due to concerns about acoustic impacts to marine mammals. In one case, the court enjoined seismic air gun research on geological fault lines conducted by the National Science Foundation off the coast of Mexico based on the court's concern that the research may be harming marine mammals in violation of the ESA and NEPA. In another case, a court enjoined a Navy funded research project proposed by the Woods Hole Oceanographic Institute designed to study the effectiveness of a high frequency detection sonar (similar to a commercial fish finder) in detecting migrating Grey Whales off the coast of California. The court's order stopped research on the development of a promising mitigation measure to avoid harming marine mammals from acoustic sources.

The legislation proposed by the Department of Defense provides solutions to marine mammal issues on three levels. It defines harassment in terms of changes in biologically significant behavior, thereby providing more flexibility in determining which military readiness activities require National Marine Fisheries Service authorization. The proposed legislation resolves the issues identified by the court in the LFA litigation by recognizing the unique nature of military systems and operations, allowing the Navy to address military readiness activities and the areas in which they are conducted in a manner that makes

sense from an operational and training perspective. Finally, it creates a national defense exemption that can be exercised when conditions warrant by the Secretary of Defense after consulting with the Department of Commerce and/or the Department of Interior.

Concerns With Other Environmental Statutes

The changes to the MMPA and ESA that I've just discussed would provide relief in two of the five critical areas identified by DoD in legislative proposals submitted as part of both the FY-2003 and FY-2004 National Defense Authorization Acts. The other three areas involve determining

- How the military services would demonstrate that emissions resulting from military readiness activities conform with State Implementation Plans under the Clean Air Act;
- When munitions should be included in the definition of "solid waste" under the Resource Conservation and Recovery Act (RCRA);
- When the presence of munitions on a range constitutes a "release" under the Comprehensive Environmental Restoration, Compensation and Liability Act (CERCLA).

Some of the impediments to sustaining military readiness result from the realities of new technologies, such as increased emissions from new tactical aircraft. Changes proposed to the Clean Air Act maintain the requirement for DoD to demonstrate conformity with State Implementation Plans but provide a better management scheme. The legislation provides for a three-year transition period during which the military services can implement phased emission reductions, or states could implement changes to their State Implementation Plans without unnecessary disruption to local business or industry.

Effective management of existing ranges is essential to ensure that the limited ranges that are available for training remain fully usable. The DoD proposal is intended to confirm the Environmental Protection Agency's Munitions Rule. It would clarify that all forms of munitions and their constituents that are placed on a range during normal use are not included in the RCRA definition of solid waste as long as they remain on an operational range. Similarly, the DoD proposal would clarify that munitions or their constituents that are deposited on an operational range would not constitute a release under CERCLA. Together these proposals would ensure our continued ability to manage ranges effectively.

Neither proposal would affect the application of RCRA or CERCLA to munitions or their constituents on a range that ceases to be an operational. Recent litigation filed against the Army over operations at Fort Richardson, Alaska, involved allegations that RCRA applies to munitions on an operational

range. If a court decision determines that munitions that are deposited on the range from normal military training activities are a solid waste, that decision could force closure of the range until a RCRA permit was obtained. Other ranges used for delivery of ordnance are no different than Fort Richardson and could be subjected to the same legal challenges.

The military services have been criticized by some for seeking legislative relief without first using national defense exemptions or presidential waivers built into environmental laws. Although many of the laws contain some provision for the President to waive compliance with a specific requirement, these waivers are of limited scope and duration. They were not intended to serve as routine management tools; they were designed to provide short term fixes for unanticipated or emergency situations.

Relief Provided for the Migratory Bird Treaty Act

I would like to thank the Congress for providing relief in one critical area last year – the applicability of the Migratory Bird Treaty Act (MBTA) to military readiness activities. We are working with the Department of Interior to craft a mutually acceptable proposed rule consistent with report language accompanying the FY-2003 National Defense Authorization Act authorizing take of migratory birds for military readiness activities, and a Memorandum of Understanding to promote migratory bird conservation, as required by executive Order 13186, for non-readiness related military actions.

Conservation Conveyances & Encroachment Partnering

The new authority provided by Congress in Sections 2811 and 2812 of the FY-2003 National Defense Authorization Act will also be very helpful. These sections give the military two new tools for acquiring and disposing of property to avoid conflicting uses of land adjacent to a military installation. We are working with the Office of the Secretary of Defense to define the implementing parameters for conservation conveyances and encroachment partnering that provides protective buffers around critical testing and training areas.

Better Range Management

While pursuing this limited legislative relief, the Navy and Marine Corps have initiated efforts to better understand and manage the environmental concerns on its ranges. The Marine Corps added \$4 million in FY-2004 to implement its Integrated Natural Resource Management Plans. The Navy has budgeted \$18 million in FY-2004 to begin this effort at the Southern California, Fallon, Key West, and Gulf of Mexico range complexes. This environmental program addresses three major areas:

- Conduct living marine resource assessments, including ocean surveys of marine mammal population densities;
- Assess groundwater, surface water, soils conditions, natural resources and the environmental compliance status for each of the complex's land-based ranges and associated airspace;
- Integrate this information into a range complex-wide environmental planning document in accordance with the National Environmental Policy Act. This planning document will in turn drive Navy range complex management plans.

Balancing Environmental Stewardship and Military Readiness

The legislation proposed by the Department of Defense will help restore an appropriate balance between environmental stewardship and military operational needs. At present, some environmental statutes require virtually no balancing. They restrict actions based on even the suggestion of potential harm to the environment until the actions can be proved to be without risk. This is often impossible to do within realistic time frames and budgets. We know that all risk can seldom be eliminated; it can only be shifted elsewhere. In the military context, this means we must realistically balance the risk from our potential impacts on natural resources with the need to properly train our Soldiers, Sailors, Airmen, and Marines – and the civilians that they defend.

Conclusion

In closing, allow me to stress that the Department of the Navy recognizes the importance of resource preservation. We are not looking for wholesale suspension of environmental laws as they apply to military readiness. We are not attempting to avoid the issues that American industries and businesses face regarding environmental compliance. We are not abandoning the outstanding stewardship over the lands entrusted to us or shrinking from environmental protection requirements. We are merely trying to restore balance where environmental requirements adversely affect uniquely military activities - activities that are necessary to prepare Sailors and Marines to engage in combat and win.

I appreciate the support of each member of this committee, and will try to respond to any comments or concerns you may have.

**TESTIMONY OF
JOHN PETER SUAREZ
ASSISTANT ADMINISTRATOR
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON MILITARY READINESS
OF THE
COMMITTEE ON ARMED SERVICES
U.S. HOUSE OF REPRESENTATIVES**

MARCH 13, 2003

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to speak with you today on behalf of the Environmental Protection Agency about the Administration's proposed National Defense Authorization Act of Fiscal Year 2004. We believe the proposed bill appropriately addresses two equally compelling national priorities: military readiness and the protection of human health and the environment. These priorities are not at odds, and we appreciate the Defense Department's willingness to work with us to craft the proposals before you today.

As you know, the proposed bill would make changes to certain pollution control laws that EPA administers and to laws concerning wildlife protection and habitat preservation, which are the province of other Federal agencies. I'll confine my remarks here today to the laws under EPA's jurisdiction.

In the wake of September 11th, we understand more than ever the importance of military readiness in combating traditional and emerging foes. Both EPA and the Department of Defense (DoD) agree that environmental protection is essential to readiness – from preserving military training grounds and developing more efficient weapons systems to safeguarding our servicemen and women. After all, the two agencies share an important mission: the protection of both our

national and environmental security. One holds little value without the other, and we believe neither mission should be sacrificed at the expense of the other. Toward that end, EPA and DoD have for years worked cooperatively toward achieving these goals, with tangible benefits to both the military and the public alike.

The bill before this Subcommittee is the result of just such collaboration. Together, the two agencies resolved key issues in a way that allows the Services to continue to “train the way they fight,” while protecting the health of our citizens and safeguarding our natural resources. I would like to highlight for the Subcommittee several of the proposed statutory changes the two agencies developed to facilitate our twin missions, both vital to the health and security of the nation.

Proposed changes to the Clean Air Act provide the military with needed flexibility, while protecting air quality

EPA recognizes that military readiness depends on DoD’s ability, particularly in the aftermath of September 11th, to move assets and materiel around the nation – perhaps on short notice. Such large-scale movements of people and machines may have impacts on State Implementation Plans (or SIPs) for air quality.

Accordingly, EPA and DoD developed proposed changes to the Clean Air Act’s SIP provisions to allow the military to engage in such activities while working toward ensuring that its actions are consistent with a SIP’s air quality standards. Under the proposed bill, the military would still be obliged to quantify and report its impacts on air quality, but would be given three years to ensure that its actions are consistent with a given state’s SIP. We believe this compromise effectively addresses the military’s readiness concerns, while ensuring timely compliance with air quality standards.

Proposed changes to RCRA will allow flexible and appropriate munitions oversight.

The Administration's bill also proposes two changes to the Resource Conservation and Recovery Act, or RCRA, the nation's solid and hazardous waste law. First, the bill contains language that would change the statutory definition of "solid waste" under RCRA to provide flexibility for DoD regarding the firing of munitions on operational ranges, while clarifying that the definitional exemptions are not applicable once the range ceases to be operational. This change comports with existing EPA policy and the Military Munitions Rule that have defined EPA's oversight of fired munitions at operational ranges since 1997. The bill specifically maintains the ability of EPA, the states and citizens to take actions against the military in the event that munitions or their constituents migrate off-range and may pose an imminent and substantial endangerment to human health or the environment, if such materials are not addressed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Secondly, the agencies worked together to craft a clear, common-sense definition of "range." Under the revised definitions of "solid waste" and "range," the military will have statutory assurance that EPA will not intervene in the firing of or training with munitions, while the public may rest secure in the knowledge that EPA, states and citizens have authority to take action if munitions pose a threat off-range or after a range is closed.

We note, for the record, that in its history, EPA has in only one instance taken an enforcement action that resulted in the cessation of live fire training at a military base – namely, at the Massachusetts Military Reservation (MMR) on Cape Cod, Massachusetts. There EPA took action only after determining that the groundwater aquifer underlying MMR, the sole source of drinking water for hundreds of thousands of Cape Cod residents, was threatened with contamination – and only after efforts to support voluntary action failed to stop the spread of

contamination. Today at MMR, EPA is overseeing cleanup work to ensure that Cape Cod residents have an adequate supply of drinking water now and in the future. The Defense Department has continued to conduct training at MMR using small arms, as well as other training without using explosives, propellants and pyrotechnics.

Analogous changes to CERCLA will preserve the Agency's Superfund authority to address contamination which presents an imminent and substantial endangerment.

The Administration's bill proposes analogous changes to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as the Superfund law. It would exempt from the definition of "release" under CERCLA explosives and munitions deposited during normal use while on an operational range. It is important to note that EPA would retain authority to take action to abate an imminent and substantial endangerment to public health and the environment due to the deposit or presence of explosives and munitions on an operational range. As with the proposed changes to RCRA, the change to CERCLA affords the military flexibility in handling munitions at operational ranges, but ensures that EPA has the ability to act should the military's response be inadequate to address the most important public health and environmental concerns.

Ongoing collaboration on munitions

Meanwhile, EPA continues to collaborate with DoD and state and tribal regulators to develop a new approach to cleaning up ordnance, explosives and munitions at non-operational ranges throughout the United States. This new approach, an expected product of the Munitions Response Committee (MRC), is designed to work within the framework of existing Federal and state authorities. Under the new process, Military Departments, EPA, Federal Land Managers, and the states and tribes will coordinate, where appropriate, and integrate their respective

statutory and administrative authorities under Federal and state environmental laws. The development of Federal, state and tribal partnerships and public participation will be key characteristics of the new process. We believe that the proposed bill complements the partnerships we are building through the Munitions Response Committee and will help the Agency ensure that munitions at both operational and non-operational ranges are subject to sound environmental management.

The new proposal would authorize the transfer of obsolete vessels for use as artificial reefs

The bill would also authorize the Secretary of the Navy to transfer certain vessels for use as artificial reefs, but retain key environmental safeguards under CERCLA, RCRA and the Toxic Substances Control Act (TSCA). These ships are often contaminated with asbestos and PCBs. EPA is working closely with the Maritime Administration to determine if and when reefing is appropriate, and to find suitable ship-scraping facilities at home or abroad to dispose of obsolete ships in a safe and environmentally sound manner.

Proposed changes in wetlands mitigation banking

One other environmental provision of the bill deserves mention here. It would allow military departments to use military construction funds to make payments to wetlands mitigation banking programs and consolidated user sites when the department is engaged in an activity that may adversely affect a wetland. A wetlands mitigation bank is typically a privately-owned site – in many instances, prior converted cropland – where wetlands are restored. Wetlands mitigation banks have enjoyed increasing acceptance and success since the mid-1990's, and the new bill would simply clarify that military funds could be used for this purpose.

Conclusion

In conclusion, we believe that the Administration's bill appropriately takes account of the

interests of the American people in military readiness and in environmental protection. I am confident that DoD and EPA can work together within the framework of the proposed law to ensure that America's armed forces are able to train to carry out their national security mission and that the Agency is able to carry out its mission of protecting human health and the environment.

This concludes my prepared remarks. Thank you for the opportunity to present EPA's views. At this time, I would be happy to answer any questions the Subcommittee members may have.

TESTIMONY OF JULIE MACDONALD, SPECIAL ASSISTANT TO THE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON MILITARY READINESS, HOUSE COMMITTEE ON ARMED SERVICES, REGARDING IMPLEMENTATION OF ENVIRONMENTAL AND NATURAL RESOURCE LAWS AND MILITARY READINESS ISSUES

March 13, 2003

Mr. Chairman and members of the Subcommittee, I am Julie MacDonald, Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks in the Department of the Interior (Department). I am pleased to appear before you today to discuss the role of the Department of the Interior in implementing federal natural resource laws and our continuing working relationship with the Department of Defense (DoD) on natural resource issues. My statement will address the Fish and Wildlife Service's responsibilities and authorities under the Endangered Species Act (ESA), the Sikes Act, and the Marine Mammal Protection Act (MMPA). These laws reflect our Nation's long-standing commitment to the conservation of our natural resources for the benefit of future generations.

The Department interacts with Department of Defense activities through its bureaus, including the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the National Park Service. The Fish and Wildlife Service strives to insure flexibility in meeting our joint responsibilities under the various natural resource laws without impacting the military's ability to train its personnel. I believe that the Fish and Wildlife Service and the military have done a

commendable job at working together to strike a balance between our legal responsibilities and the Armed Forces' duty to be both protectors of our National Security and stewards of our natural heritage. I also acknowledge that more can be done. I will address both our successes and challenges as I discuss issues associated with the applicable laws.

Endangered Species Act

The ESA was passed in 1973 to conserve vulnerable plant and animal species that, despite other conservation laws, were in danger of extinction.

DoD has a critically important role to play in the conservation of many rare plants and animals. At least 300 species listed as threatened or endangered occur on DoD-managed lands. DoD manages approximately 25 million acres on more than 425 major military installations throughout the United States. Access limitations due to security considerations and the need for safety buffer zones have sheltered many military lands from development pressures and large-scale habitat loss. As a result, some of the finest remaining examples of rare wildlife habitats exist on military lands.

The Fish and Wildlife Service has strived to establish good relationships with DoD that enable the military to carry out its mission of protecting our country while also ensuring the conservation of ESA-listed species on land it manages. Assistant Secretary Manson's statement from last year's hearing on these issues gave some outstanding examples of these partnerships,

and I am including those examples again today, at the end of my statement, so that they are before you as you consider these issues.

Candidate Conservation

Conserving species before they need protection under the ESA is easier, more efficient, and poses fewer challenges to federal agencies, including the military. In partnership with DoD and NatureServe, the Fish and Wildlife Service is developing a list of all at risk, non-federally listed species that may be found on or near military lands. This partnership project was developed by the military agencies, and demonstrates their interest in working with the Fish and Wildlife Service to benefit species.

The term "species at risk" is a term used by NatureServe for a native species that is either a candidate for listing or is considered by NatureServe and the Network of Natural Heritage Programs to be "imperiled" or "critically imperiled." In NatureServe's use of the term, "Species at risk" refers to species that are presumed extinct, historical, critically imperiled, imperiled, and vulnerable (GX, GH, G1, G2, G3 ranks, respectively). Although the Fish and Wildlife Service generally means the same thing when we use the term "species at risk," we use the term as a descriptive, illustrative term for those species that may warrant conservation to prevent the need to list under the ESA. A ranking of G1, G2, or G3 indicates those kind of species. "Imperiled" and "critically imperiled" are defined by NatureServe as terms referring to G1 and G2 ranked species.

Once a species at risk is identified based on a mutual priority between the DoD installation and the FWS office, the Fish and Wildlife Service works with DoD to develop and implement conservation recommendations for the relevant activity. DOD working on a particular "species at risk" is based on a mutual priority between the DOD installation and FWS office.

In addition to this local and regional cooperation, Fish and Wildlife Service and DoD personnel have been meeting quarterly for several years in an "Endangered Species Roundtable." This informal session allows for open discussion and can lead to the referral of particularly difficult issues to headquarters for guidance or resolution. The group also reviews the Sikes Act and Integrated Natural Resource Management Plan (INRMP) development and implementation as they pertain to endangered species management.

Challenges

Even with these successful partnerships, we acknowledge that there have been challenges in resolving endangered species conservation and the military mission at some DoD bases and facilities. For example, 18 threatened or endangered species occur on Camp Pendleton, a Marine Corps Base in California. For some of these species, like the tidewater goby, the base harbors the only known remaining populations. Preventing potential conflicts between endangered species conservation and Camp Pendleton's primary military mission continually challenges the creativity of both the Fish and Wildlife Service and the base leadership.

Section 7(j) of the ESA provides a national security exemption that DoD can invoke in cases where National Security would be unacceptably compromised by conservation responsibilities. This exemption has never been invoked by DoD, a fact that speaks very well to the creativity of our military and natural resource professionals. However, it is apparent that we must avoid penalizing the military for having done positive things for conservation of species and we must not unfairly shift the burden of species protection to the military. Additionally, in some cases, issues arise because of differing perceptions between our respective agencies about the effects of the provisions of the ESA. Finally, I must note that many of the challenges presented to the military under the ESA are similarly faced by other federal agencies and private landowners. We look forward to continuing to work with the DoD to clarify these issues and build upon the relationship we have established.

Recent Court Decision on Definitional Exclusions from Critical Habitat

Integrated Natural Resource Management Plans (INRMPs) are planning documents that allow the military to implement landscape-level management of its natural resources while coordinating with various stakeholders. The Department of the Interior initiated a policy in the previous Administration, which we have continued, to exclude military facilities from critical habitat if there was an approved INRMP for that facility which addressed the species in question. However, a recent court case has cast doubt on our ability to continue this practice.

The policy is based on the definition of critical habitat which states, in part:

... the specific areas within the geographical area occupied by the species ... on which

are found those physical or biological features – (I) essential to the conservation of the species and (II) which may require special management considerations or protection;

The exclusion policy was based on a decision that military lands with an approved INRMP, and other types of land with approved management policies, did not require special management consideration because they already had adequate management and, thus, by definition would not be considered critical habitat.

However, the U.S. District Court in Arizona has ruled, in a case relating to Forest Service lands (*Center for Biological Diversity v Norton*), that this interpretation is wrong, and the fact that lands require special management necessitates their inclusion in, not exclusion from, critical habitat. The Court went on to say that the government's interpretation amounted to our inserting the word "additional" into the statute (between "require" and "management"), and that only Congress can so revise the definition.

While the implications of this decision go far beyond military lands, we felt it important to advise the Committee of it and the cloud it casts over our continued ability to exclude military lands with approved INRMPs from critical habitat. We believe this adds additional weight to the Administration's proposal for a statutory exclusion.

To avoid possible confusion in light of the Court's ruling, we would suggest striking the words "provides the 'special management considerations or protection' required under the Endangered Species Act: (16 U.S.C. 1532(5)(A)) and" from the proposed new section 2017(a). While that

phrase is consistent with our interpretation of the law, it could cause future litigation problems due to the Court's ruling that the necessity for "special management considerations or protection" requires that land to be included, not excluded, from critical habitat. This change would leave the section with an unambiguous statement that completion of an INRMP for the species in question precludes designation of critical habitat at that facility.

Recent Critical Habitat Actions

The ESA portion of the Administration's proposal addresses critical habitat designations. The Department has been able to address a number of DoD concerns over critical habitat designations since your last hearing on this issue.

Critical habitat proposed for the purple amole, a plant, in California included significant portions of Camp Roberts and Fort Hunter Liggett. Camp Roberts had a completed INRMP which addressed conservation of this plant, and we excluded it from the critical habitat designation on this basis.

While Fort Hunter Liggett was developing an INRMP to address the plant, it did not have the plan completed at the time we had to make the decision on the critical habitat designation. However, the Department of Defense had provided us with detailed comments on the adverse impacts to military readiness that would result from the proposed designation, and these justified removing the Fort from the critical habitat under section 4(b)(2) of the ESA. We determined that

the benefits of excluding the area exceeded the benefits of inclusion, in that the adverse impacts to national defense exceeded the benefits that would result from designating the area as critical habitat.

Although not the basis for our decision, the fact that Fort Hunter Liggett had a statutory obligation to complete its INRMP, and to include the plant within that plan, provided us with an additional comfort level for that exclusion.

Sikes Act and Integrated Natural Resource Management Plans

In fiscal year 2002, the Fish and Wildlife Service and state fish and wildlife agencies assisted in development, review, and/or implementation of INRMPs for 225 military installations in the United States.

INRMPs serve as an effective vehicle through which DoD and the Military Services can comprehensively plan for conservation of fish and wildlife species. This planning has the potential to address important needs for resident endangered species, including the protection of habitat.

We are committed to improving and expanding our existing partnerships with DoD, the Army, the Navy, the Air Force, and the Marine Corps. We look forward to opportunities to increase the utility of INRMPs as tools to maximize the potential benefits of DoD lands to fish and wildlife

conservation while ensuring effective training of our troops.

Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 established a federal responsibility, shared by the Secretaries of the Interior and Commerce, for the management and conservation of marine mammals. The Department of the Interior is responsible for sea otters, walrus, polar bears, dugongs, and manatees, while the Department of Commerce is responsible for cetaceans and pinnipeds, other than walrus, including seals, whales and dolphins. In 1994, Congress enacted a number of amendments to the statute. One of the provisions, with broad applicability throughout the Act, added the definition of "harassment" as an element of the Act's take provisions.

Over the last several years, the Fish and Wildlife Service has worked diligently with the National Marine Fisheries Service (NMFS), the Marine Mammal Commission (MMC), the United States Navy, and Alaska Natives to develop proposals that enhance marine mammal conservation, and provide greater certainty to the regulated public regarding certain areas of the existing law. During this process, revisions to the definition of harassment were considered to address a number of concerns, including those expressed by the Navy. The text of this proposed amendment to the definition of harassment is contained in Administration's Range Readiness and Preservation initiative in a way that only applies to DoD military readiness activities. We note that this same language applying to all entities, in addition to other important proposals related to the MMPA, are contained in the Administration's comprehensive legislative proposal

to reauthorize and amend the Marine Mammal Protection Act. This MMPA reauthorization proposal was transmitted to Congress at the end of last month. The Department strongly supports enacting this comprehensive legislative proposal, which will address the concerns of the Navy regarding harassment.

The Administration's Range Readiness and Preservation initiative contains two other provisions related to the MMPA – an incidental take provision related to military readiness activities, and a national defense exemption. Because the Department of Commerce has the most interaction with DoD regarding these particular MMPA issues, we will defer to their comments on these provisions.

Conclusion

In closing, Mr. Chairman, I believe both the Department of the Interior and DoD have acted cooperatively to implement natural resource conservation laws passed by Congress. We are aware of the challenges that have arisen during this endeavor. The Department is prepared to explore and craft creative solutions to balance our conservation mandates with military readiness. We look forward to continue work with the Department of Defense on this vitally important matter.

This concludes my testimony. I appreciate the opportunity to appear today before the Committee, and I would be pleased to answer any questions you have.

EXAMPLES: FWS-DOI COOPERATION IN ENDANGERED SPECIES CONSERVATION

United States Air Force Academy, Colorado The U.S. Air Force Academy recognized the value of long-range planning when it commissioned a baseline study of small mammals in 1994. The survey aided the Air Force in identifying the presence of the Preble's meadow jumping mouse, which at the time was a candidate for listing. A species receives protection under the ESA when it is listed as endangered or threatened. In order to help DOD agencies plan their activities, the Fish and Wildlife Service shares information on listing candidates and upcoming listing actions. As a result, the Academy entered into a partnership with the Colorado Natural Heritage Program to study the mouse and provide information for management and conservation strategies.

When the jumping mouse was listed as threatened in 1998, the Fish and Wildlife Service took steps to ensure that the Academy would be a full partner in the species' management and recovery. The Academy's natural resources manager is a member of the Science Advisory Team, a group of scientists and managers dedicated to compiling the best science available to support the conservation of the mouse throughout its range. An Academy representative also holds a position on the executive committee for a habitat conservation plan (HCP) under development for El Paso County, Colorado. Through the HCP process, the Academy will coordinate with non-federal entities in the development of regional conservation strategies for the mouse. In addition, at the request of the Fish and Wildlife Service, the Academy's natural resources manager is representing the Air Force on the Preble's Meadow Jumping Mouse Recovery Team, which is charged with developing a plan to restore the species to a secure status. The Air Force also initiated a programmatic formal consultation under section 7 of the ESA for its Preble's meadow jumping mouse conservation management plan and conservation agreement. The biological opinion provided by the Fish and Wildlife Service on the Academy's conservation management plan significantly reduced the regulatory burden on both the Academy and the Fish and Wildlife Service by removing the need for section 7 consultations for each instance of regular maintenance.

Camp Pendleton, California In 1999, substantial areas of Camp Pendleton were included in proposed designations of critical habitat for 5 of the 18 listed species that are present on the base. The Fish and Wildlife Service was able to work within the provisions of the ESA to avoid designating critical habitat on the training areas within Camp Pendleton.

The ESA requires the Fish and Wildlife Service to determine whether designation of critical habitat is prudent and determinable. Under sections 4(b)(2) of the ESA, the Secretary of the Interior can exclude areas from critical habitat designations when economic or policy interests outweigh the expected benefits of designation. The Fish and Wildlife Service has used military

readiness as a reason to exclude training areas from critical habitat designations many times now.

For example, the 1999 proposals for critical habitat on Camp Pendleton would have designated over 50 percent of the base as critical habitat for listed species, including the California gnatcatcher, the Tidewater goby, the Riverside fairy shrimp, the San Diego fairy shrimp, and the arroyo toad. As a result of the exclusion process discussed above, the Fish and Wildlife Service was able to exclude most of Camp Pendleton from the designated critical habitat due to Marine Corps concerns about the effects the designations could have on military training critical to national security. The land area currently designated as critical habitat on Camp Pendleton encompasses less than four percent of the 125,000 acre, over half of which is located on land leased by the State, rather than the base proper.

Fort Hood, Texas Under the section 7(a)(2) of the ESA, federal agencies are required to consult with the Fish and Wildlife Service to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats. A good example of this process occurred recently at Fort Hood. As one of the largest heavy artillery training sites in the country, it conducts live weapons fire and aviation training and houses more than 500 tanks. Much of the 220,000-acre base resembles barren, scorched battlefields with ruts as deep as trenches. However, it also contains essential nesting habitat for two endangered songbirds, the golden-cheeked warbler and black-capped vireo. Fort Hood is balancing its military mission with environmental stewardship.

As part of its responsibility under the ESA, the post manages 66,000 acres, more than 25 percent of the land on base, for the recovery of these two endangered species. The post also provides a haven to wintering bald eagles, occasional visiting whooping cranes, peregrine falcons, and other rare plant and animal species.

The Army entered into an interagency consultation with the Fish and Wildlife Service under section 7 of the ESA. In 1993, the Fish and Wildlife Service issued a "no jeopardy" Biological Opinion (BO). Following the issuance of the BO, Fort Hood contracted with the Nature Conservancy of Texas for further research and monitoring of the birds. In conjunction with Fish and Wildlife Service and Army biologists, Conservancy researchers are compiling the most comprehensive body of information on the birds to date. Fort Hood has followed the requirements of the 1993 BO (including a version amended in 2000) and has funded valuable research and management strategies that can be applied to warbler and vireo issues range-wide. The birds are benefiting from our partnership with the Garrison Commander and base natural resources staff.

Fort Bragg, North Carolina For listed species, recovery is the ultimate goal. Section 7(a)(1) of the ESA directs federal agencies to use their statutory authorities to fulfill this goal. The Sandhills region of North and South Carolina supports the largest population of red-cockaded woodpeckers (RCW) in the United States. Fort Bragg is the only federal authority managing

lands in that region for the recovery of RCW's. The area around Fort Bragg is being rapidly developed, and if critical tracts are not protected soon, they will be lost to the woodpecker. Loss of these lands due to development also would limit Fort Bragg's ability to sustain current and future military training. In response, the Army launched a Private Lands Initiative with The Nature Conservancy and other partners to purchase land or conservation easements from willing sellers. The lands will not only become available for red-cockaded woodpecker recovery, but also for compatible military training activities and recreation.

Fort McCoy, Wisconsin Fort McCoy encompasses 59,750 acres and is home to a diversity of vegetation, including wild lupine, which is the only known food plant for larvae of the endangered Karner blue butterfly. Since 1990, when the installation discovered Karner blues on its land, military training and the butterflies have coexisted and thrived. Fort McCoy officials began coordinating with the Fish and Wildlife Service on the impact of both military and non-military activities affecting the Karner blue butterfly in 1992. In early 1994, the Fish and Wildlife Service issued Fort McCoy a no-jeopardy BO that included "reasonable and prudent measures" and "terms and conditions," both as provided under the ESA. As part of an effort to fulfill those terms, Fort McCoy submitted a draft Karner Blue Butterfly Conservation Plan to the Fish and Wildlife Service in 1995. The plan outlined the direction Fort McCoy would take to manage its lands for the butterfly while allowing for the successful completion of the installation's military training mission. The final conservation plan was completed in 1997. Fort McCoy has been able to comply with the ESA while having only minimal impact on military training.

Pearl Harbor, Hawaii A Navy team recently created some critical mudflat habitats for endangered waterbirds on the shores of Pearl Harbor. These mudflats are home to a number of Hawaiian waterbirds, including four endangered species and a variety of migratory birds. The site is a small pond within a unit of the Pearl Harbor National Wildlife Refuge. While the underlying land and water is owned by the Navy, the refuge is managed by the Fish and Wildlife Service. Over the years, the pond has provided decreasing value to waterbirds because of the increasing growth of invasive plants and weeds. Fish and Wildlife Service staff had attempted to create clear spaces by changing the water levels, but it wasn't enough to make the area suitable habitat for waterbirds. Additional work with heavy equipment was needed to create conditions favorable for wildlife.

In August 2000, a Navy Seabee unit answered the Refuge Manager's request for help and at the same time benefited from some real-life training. Two Seabee heavy equipment operators maneuvered a bulldozer and grader to sculpt the bottom of the pond. Putting their Navy engineering skills to work in this training exercise, they reshaped mudflats for endangered Hawaiian stilts and constructed a drainage system according to a refuge restoration plan. This project was just one example of the Navy's strong partnership with the Fish and Wildlife Service's national wildlife refuge in Pearl Harbor. For years, sailors and their families also have volunteered numerous weekend hours creating new habitats and clearing away trash and excess vegetation at the refuge.

Air Force in Alaska and Peregrine Falcon Recovery Since the early 1980s, the Air Force has worked with the Fish and Wildlife Service to minimize or eliminate impacts of Air Force activities on peregrine falcons in Alaska. Through the section 7 consultation process, the Air Force and the Fish and Wildlife Service identified major peregrine nesting areas in proposed Air Force training locations. Much of this training involves very low-level and high-speed flights, a combination with the potential to disturb many wildlife species, including nesting peregrine falcons. The Air Force agreed to a protective "no-fly" zone of 2 miles horizontal distance and 2,000 feet above the nest level in these dense nesting areas. Additionally, the Air Force is monitoring several nearby peregrine populations that fall outside the protected areas. This monitoring effort, which has continued since 1995, shows that the protective zones appear to provide adequate protection in the densest nesting areas and that the incidental loss of nestlings outside these zones is below the levels originally anticipated. Rather than making a minimal effort to comply with the ESA, the Air Force actively pursued programs to promote peregrine recovery, which helped make it possible to remove this magnificent bird from the threatened and endangered species list in 1999.

TESTIMONY OF
DR. WILLIAM T. HOGARTH
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE
COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON MILITARY READINESS
U.S. HOUSE OF REPRESENTATIVES

MARCH 13, 2003

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today regarding the FY 2004 Department of Defense Readiness and Range Preservation Initiative (RRPI). I am Dr. William T. Hogarth, Assistant Administrator for Fisheries at the National Oceanic and Atmospheric Administration (NOAA).

I appreciate the opportunity to address issues of environmental protection in the context of military operations and readiness. NOAA Fisheries' strategic goals regarding environmental stewardship are to build sustainable fisheries, recover protected species, and sustain healthy coastal ecosystems. Our stewardship of living marine resources is conducted for the benefit of the Nation through science-based conservation and management. NOAA Fisheries' role in environmental stewardship is defined legislatively through the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act, and other statutes.

Marine Mammals

With regard to marine mammals, NOAA Fisheries is responsible for the conservation and management of 147 marine mammal stocks of cetaceans and pinnipeds under the MMPA. NOAA cannot fulfill this mission by itself. We must work with our constituents, other resource management agencies, such as the Fish and Wildlife Service and the Environmental Protection Agency, and agencies such as the Department of Defense (DOD) to help us fulfill these stewardship responsibilities.

Over the last few years, NOAA has been working more closely with our federal partners at DOD, particularly the Navy, due to our shared responsibilities for the oceans. We have developed a productive working relationship. NOAA Fisheries and the Navy have undertaken a number of efforts to improve coordination between the two agencies, including research coordination and strategic planning opportunities. Discussions have focused on the integration of agency processes

under the ESA and the MMPA, as well as the concerns raised by the military in achieving its mission responsibilities.

To build on efforts at the staff level, I have been meeting with Mr. H.T. Johnson, Acting Secretary of the Navy, on ways to expand our partnership in achieving our distinct yet complementary missions. These meetings have focused on opportunities to expand coordination efforts for complying with applicable resource laws, and ways to continue to increase cooperative research and outreach on complex scientific issues.

Additionally, NOAA Fisheries is working hard to meet the increasing demands being placed on our regulatory program to process applications and authorizations under MMPA. The phenomenon of sound in the ocean has grown tremendously and, as with many scientific issues, the more questions you ask about its impacts on marine mammals, the more you find that are yet to be answered. Not only has the complexity of the analyses increased, but public scrutiny as well.

MMPA Reauthorization

In February of this year, the Administration transmitted its proposed MMPA Amendments of 2003 to Congress. One important provision contained in the Administration's MMPA bill relative to RRPI is a change to the definition of harassment. Although the existing regime under the MMPA and ESA is fairly flexible, the Administration recognizes that the definition of harassment under the MMPA needs clarification. As a result, NOAA Fisheries worked closely with the Department of Defense, the Department of the Interior, the Marine Mammal Commission and others to develop a revised definition as part of the Administration's MMPA reauthorization package. We believe that a clearer definition of harassment would be beneficial to the regulated community as a whole.

We look forward to working with Congressional members and staff to help provide any necessary information or assistance that will aid in the reauthorization of the MMPA in the current Congress.

DOD Authorization: The Readiness and Range Preservation Initiative of 2003

The National Defense Authorization Act for FY 2004 contains a number of provisions that are relevant to NOAA Fisheries and the MMPA. The RRPI would make a number of amendments to the MMPA specifically for military readiness activities. These amendments would apply to both the Department of Defense and the U.S. Coast Guard. NOAA Fisheries understands the timing issues relative to military readiness. Because these proposed amendments deal solely with military readiness activities and national security, they have been included in the draft National Defense Authorization Act for FY 2004 and not the draft Marine Mammal Protection Act Amendments of 2003 that the Administration transmitted to Congress on February 21, 2003.

The key points noted in the "Purposes" section of the RRPI legislation are: "To ensure military readiness by addressing problems created by encroachment on military readiness activities,

marine areas, and airspace reserved, withdrawn, or designated for military use; reaffirm the principle that such lands, marine areas, and airspace exist to ensure military preparedness; shield military readiness activities and lands, marine areas....from encroachment, while ensuring that Department of Defense (DOD) fulfills its environmental stewardship responsibilities... re-establish the appropriate balance between military readiness and environmental stewardship...." The term "military readiness activities" is broadly defined and would include any training and operations that could be related to combat readiness.

Definition of Harassment: The RRPI includes a change to the definition of 'harassment' in Section 3 of the MMPA. This definition is the same as the one contained in the Administration's proposed MMPA Amendments; however, the RRPI definition only applies to military readiness activities, rather than all regulated activities.

Incidental Take Permits: Additional amendments to the MMPA that are contained in the RRPI include a group of changes to the current legislative requirements that govern applications for incidental take permits (section 101(a)(5)(A) in the MMPA). Incidental takes are those that are unintentional, but not unexpected. These takes occur during otherwise lawful activities. The MMPA established a moratorium on the taking of marine mammals in U.S. waters by any person, as well as by U.S. citizens in international waters.

In 1981, Congress amended the MMPA to provide for 'small take' authorizations for otherwise lawful activities. Under the present scheme, NOAA Fisheries will authorize the takes of small numbers of marine mammals if the takings will have no more than a negligible impact on those marine mammal species or stocks, and not have an unmitigable adverse impact on subsistence harvests of these species. Through regulation, NOAA Fisheries has defined "negligible impact" to be an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

These small take authorization regulations are implemented through Letters of Authorization (LOAs), can last for up to five years, and require notice and comment rulemaking. Navy and other Department of Defense activities sometimes need authorization for the incidental take of marine mammals.

In 1986, Congress amended both the MMPA, under the small take program, and the Endangered Species Act, to authorize takings of depleted (and endangered or threatened) marine mammals, again provided that the taking (lethal, injurious, or harassment) was small in number and had a negligible impact on marine mammals.

In 1994, MMPA section 101(a)(5) was amended to establish an expedited process by which U.S. citizens can apply for authorization to incidentally take small numbers of marine mammals by harassment, referred to as Incidental Harassment Authorizations (IHAs). IHAs may only last up to one year in duration. However, this program allows authorizations to be issued within 120

days, instead of the 6-8 months required for LOAs issued under “small take” regulations. Most LOAs and IHAs to date have authorized the incidental harassment of marine mammals by noise.

The RRPI makes a number of changes to section 101(a)(5) of the MMPA, as it applies to military readiness activities. The RRPI would add the words “military readiness activities” after “other than commercial fishing” and adds a new paragraph 7(A) to this section. This new paragraph, is similar to the current paragraph 5(A), with the following exceptions:

- (7)(A) does not contain the terms “specified activity,” “specified geographical region,” and “small numbers.”
- (7)(A) does not contain (5)(A) language that requires publication of the proposed authorization in the *Federal Register*, public media, etc., to provide opportunity for public comment. This was inadvertently omitted in the drafting and there was no intention to limit the opportunity for public comment.

The important point in evaluating the impact of these proposed amendments to the MMPA small take program provisions on NOAA’s trust resources and the MMPA is that DOD will still have to show that its activities are having a negligible impact on the marine mammal species and populations. Additionally, it will have to demonstrate that its activities will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses pursuant to the MMPA. These are the key elements to maintaining the health of marine mammal species and are the premise for the integrity of the incidental take authorization section of the MMPA. Additionally, military readiness activity small take authorizations will have to abide by all Endangered Species Act, National Environmental Policy Act, and Administrative Procedure Act requirements where they apply.

To make the requisite negligible impact determination and to comply with these other environmental laws, NOAA Fisheries would have to know what activities would be taking place - also, when and where they would occur. A substantive effect on more than a small proportion of a population would likely have more than a negligible impact; therefore, numbers are taken into account, based upon biological significance, which is how NOAA Fisheries has been implementing the program. Consequently, I predict that the proposed amendments to the MMPA would have no adverse impact on the protection of marine mammals.

Exemption Clause:

With regard to the exemptions clause for actions necessary for national defense, the language would allow the Secretary of Defense, after consulting with the Secretary of Commerce and the Secretary of the Interior, to exempt any action or category of actions undertaken by the Department of Defense from compliance with any requirement of the Marine Mammal Protection Act. These exemptions may be granted for two years, with additional two year exemptions possible after further consultation between the Secretaries. This exemption is similar to the one found in the Endangered Species Act.

Conclusion

We support the FY 2004 Department of Defense Readiness and Range Preservation Initiative and believe that it takes account of the interests of the American people in military readiness and in environmental protection. I am confident that DOD and NOAA can work together within the framework of the proposed law to ensure that America's armed forces are able to train to carry out their national security mission and that the Agency is able to carry out its marine conservation responsibilities. NOAA will also continue to work with the Navy and the rest of the Department of Defense to improve coordination between our programs. We look forward to continuing our partnership.

House Armed Services Committee - Readiness Subcommittee
 Testimony on Environmental Legislative Proposals.

Submitted by: Darlene R. Ketten, Ph. D.

13 March 2003

Senior Scientist
 Biology Department
 Woods Hole Oceanographic Institution

Assistant Professor
 Dept. of Otology and Laryngology
 Harvard Medical School

This testimony is being submitted to the Committee to represent my views as an individual scientist. It does not represent those of either institution with which I am affiliated. I have arrived at my position stated below based primarily upon my experience as a researcher with over 15 years experience in the combined fields of mammalian hearing, ear disease, and head and neck trauma. My work focuses on understanding marine mammal hearing mechanisms and modeling the hearing of endangered species. My comments are also based on my experience as a member of the recent National Research Council panel on Ocean Noise and as a member of NOAA Fisheries advisory board on noise exposure.

Concomitant with man's increasing use of the oceans is an increase in the ocean's acoustic budget. As indicated in the current NRC report on Ocean Ambient Noise, noise from human related activity is increasing on average throughout the oceans at 3 dB per decade; i.e., essentially doubling. Given our ever increasing activity in all seas and at all depths, this figure is not surprising. Anthropogenic noise is an important component of virtually every human endeavor in the oceans, whether it be shipping, transport, exploration, research, military activities, construction, or recreation. For some activities, such as military exercises and oil exploration, impulsive and explosive devices are fundamental tools that are relatively short-term but locally intense; for others, such as shipping, the source levels may on average be lower, but the sounds are constant and cumulatively dominate the noise fields in high traffic areas of the oceans. Because there is no human activity in the oceans that does not add noise and because our activities span the globe and produce sounds over the entire audible range of most animals, it is reasonable to assume that any man-made noise in the oceans may have a significant and adverse impact on marine animals. Because marine mammals are especially dependent upon hearing and in many cases are endangered, the concern over noise impacts on these animals is particularly acute. These concerns are both logical and appropriate, but it is also important to note that at this time, there is no data that gives us a firm answer on what will be the extent of impact from any one sound source. We simply do not have sufficient data to put accurate boundaries on our concerns.

This lack of discrete knowledge on impacts of underwater sound, coupled with the relatively open wording of the original MMPA and with recent dramatic stranding events, has led to a heated, highly polarized, litigious climate. An example of broad extrapolation from one event to another which has military relevance is a suit brought to halt LFA use based on the fact that strandings of beaked whales have been shown to correlate with naval exercises involving mid-range sonars. Whales that stranded in three such cases have been found to have an unusual suite of traumas, the mechanisms for which are still under investigation. However, there are substantial differences between LFA and mid-range tactical sonars and to date there is no current evidence of physical harm from LFA. Nevertheless this suit, which adduced as part of its concerns the Bahamian findings, was successful. Recently, other cases have been brought to halt physical oceanographic and behavioural research as well, admittedly motivated in part by very

sincere but broad, undocumented concerns for the use of other sound sources as well. Clearly, the issue of restrictions of sound sources is not simply a military concern; decisions that are made here may impact indirectly the permitting and use of many forms of sound use in our seas.

As noted above, virtually every human activity in the oceans involves sound either intentionally or as a by-product. For responsible use of the seas, it is imperative to consider to the best of our ability the probable impact of each sound we add and to determine whether that impact is worth its inherent risk. At some level, some individuals may be impacted by any sound over natural ambient. We must consider for any effort introducing sound use in the oceans whether and to what extent the projection and repetition of the signals employed will adversely impact significantly or negligibly any species within the "acoustic reach" of the source. Realistically, because of the diversity of hearing characteristics among marine animals, it is virtually impossible to eliminate all acoustic impacts from any endeavor, therefore the key issues that must be assessed are: 1) what combination of frequencies and sound pressure levels are proposed to fit each anthropogenic task, 2) what species are present in the area the device will ensound at levels exceeding ambient, 3) what is the probable severity of any potential impacts to the exposed animals from the combined frequency-intensity-temporal characteristics of the source.

The important point here is will these factors produce any biologically significant impact to a species. Of course sound operates at the individual level, but the fundamental concern is for the well-being of populations. All data to date have been gathered on individual or local populations. As the NRC report on Ocean Noise and Marine Mammals emphasized, our major concern is for population level impacts and consequently a major recommendation was to structure all research on marine mammals to allow predictions of population-level consequences. Individual effects are inputs to our data base, but the true metric to apply is biological significance.

The original MMPA noted a concern for impact on marine mammal populations. Yet, much of the debate and contention that we see today over the issues of sound in the oceans derives from and focuses on relatively few impacted individuals. For example in the case of the Bahamian stranding 7 animals died under circumstances clearly correlated with the use of military sonars. Reviews of past strandings suggest that there have been 8 to 10 similar events within the last 40 years, all involving only beaked whales. Clearly there should be concern; there is substantial reason to believe that sonars are at least a contributory cause of strandings under certain circumstances. The mechanisms involved are extremely important to determine, and there is now considerable research effort being devoted to this problem. Nonetheless, the strandings must be kept in perspective. The total mortality of suspected military related strandings in 40 years is fewer than 300 animals, all involving two genera of beaked whales. We do not have evidence that a population level much less multi-species threat exists from those strandings. At this time we do not have any evidence to suggest that sonars in general use have a similar effect. NOAA fisheries in a review of stranding and necropsy records for the same species did not find any evidence of similar traumas in single beaked whale strandings nor were these traumas found in any species other than beaked whales.

Precaution is appropriate, however, currently, extraordinarily precautionary positions are holding sway in which very broad and scientifically unfounded extrapolations are being made. We are losing sight of the need for balance and for perspective. High profile events, like the dramatic strandings in the Bahamas and Canaries, are being construed as virtually global, both in terms of species and sound source types. This is a potentially hazardous position since, ironically, this type of over-interpretation is actually preventing research that could provide precisely the answers that are needed to protect and conserve marine species. In a sense, precaution, in the extreme, may lead us to stagnation, and worse, because it is a position founded on assumed rather

than known effects, it may prevent us from determining the true sources of greatest potential harm.

For responsible stewardship of our oceans, it is imperative that we understand our impacts and that we proceed with a balanced and informed view. Therefore, it is equally important that views of all parties with legitimate interests be considered. Risk assessment must be a part of that debate. There is undeniably some risk to some individuals from any underwater sound, but individual risk must be balanced by potential gain to the species. The addition of significant to the proposed revisions is a conceptual step forward worthy of consideration. It implies that our focus be shifted from the impossible goal of avoiding any possible individual impact to biologically significant, population level concerns. Such a shift, implemented with caution and appropriate oversight, will not only reduce litigation for military operations, but may provide opportunities for better understanding by the public of the appropriate scope for our concerns and of the critical need for research that will provide data to finally allow us to place clear and appropriate limits on sound use in our seas.

For testimony of Dr. Darlene R. Ketten before House Armed Services Committee's Readiness Subcommittee, 13 March 2003

Dr. Darlene R. Ketten: Past, Current, Pending Support

From 2001 through 2003 Principal Investigator(s) and Project Title	Supporting Agency	Period Covered	Award Amount
Current and Past Support			
GRANT: Experimental Measures of Blast and Acoustic Trauma in Marine Mammals	ONR N00014-97-1-1030	09/1/1997- 9/30/2003	\$733,029
SUBCONTRACT: Strategies to Optimize Benefit from a Cochlear Implant (M. Skinner, Wash Univ., Co-PI)	NIH/NIDCD subct Wash Univ Med Sch (via Mass Eye & Ear Infirmary/Harvard)	12/01/1997- 11/30/2002	\$205,266
CONTRACT: Collection and Analysis of Beaked Whale Ear Structures	NOAA/NMFS 40AANF902212/40AANF0A1329	09/30/1999- 08/31/2001	\$25,600
CONTRACT: Cetacean Inner Ear Models	SPAWAR/SERDP N66001-00-1-8959	06/09/2000- 12/31/2001	\$169,988
GRANT: Tomographic Ocean Imaging Facility: 2D and 3D Visualization of Real Marine Structures	ONR N00014-00-1-0902	06/16/2000- 6/15/2001	\$200,000
GRANT: Models of Whale Auditory Function	ONR - ESME N00014-00-1-0905	09/01/2000- 09/30/2003	\$820,733
CONTRACT: Inner and Middle Ear Pathology of Stranded Beaked Whales	NOAA/NMFS 40AANF0A1314	09/25/2000- 12/31/2001	\$40,705
CONTRACT: Turtle Blast Damage Assessment	NOAA/NMFS 40AANF0A4205	12/31/2000- 12/02/2002	\$15,800
GRANT: Acquisition of a Computerized Tomographic 2D/3D Imaging Facility	DURIP #N00014-01-10499	04/01/2001- 3/31/2002	\$330,952
CONTRACT: Turtle and Tuna Hearing Yr 1 (S. Bartol, Co-P)	NOAA 40-AB-NF-111715	06/01/2001- 5/31/2003	\$84,479
CONTRACT: Turtle and Tuna Hearing Y2 (S. Bartol, Co-PI)	NOAA #AB133F-02SE1152	07/10/2002- 05/30/2003	\$50,000
SUBCONTRACT: Hearing in the North Atlantic Right Whale (<i>Eubalaena glacialis</i>)	NOAA NE Consortium UNH Subaward 02-560	07/01/2001 06/30/2003	\$177,935
CONTRACT: Turtle Blast Trama	NOAA/NMFS 40AANF1A9154	09/01/2001- 08/31/2002	\$25,000
GRANT: Functional Measures of Sea Turtle Hearing	ONR N00014-02-10510	10/01/2001- 09/30/2003	\$263,366
Pending Support			
SUBCONTRACT: Active Filtering in the Cochlea	Boston University/NIH	07/01/2003- 06/30/2008	\$234,409

**DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION**

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 108th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: **Dr. Darlene R. Ketten**

Capacity in which appearing: (check one)

☐ Individual

☒ Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: Woods Hole Oceanographic Institution

FISCAL YEAR 2003 (Award Ends in 2003; *=multiyear)

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
* N00014-02-10510	ONR	263,366	Sea Turtle Hearing
* UNH SubAwd 02-560	NOAA	177,935	Hearing in North Atlantic Right Whale
* 40-AB-NF-111715	NOAA/NMFS	84,479	Turtle & Tuna Hearing Yr 1
* AB133F-02SE1152	NOAA/NMFS	50,000	Turtle & Tuna Hearing Yr 2
* N00014-00-1-0905	ONR	820,733	Models of Whale Auditory Function
* N00014-97-1-1030	ONR	733,029	Experimental Measures of Blast & Acoustic Trauma in Marine Mammals

FISCAL YEAR 2002 (Award Ends in 2002; *=multiyear)

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
* 40AANF1A9154	NOAA/NMFS	25,000	Turtle Blast Trauma
* N00014-01-10499	ONR/ DURIP	330,952	Acquisition of Computerized Tomographic 2D/3D Imaging Facility
* 40AANF)A4205	NOAA/NMFS	15,800	Turtle Blast Damage Assessment
* subcontract from Washington University Medical School through Harvard/Mass Eye & Ear Infirmary	NIH/NIDCD	205,266	Strategies to Optimize Benefit from a Cochlear Implant

FISCAL YEAR 2001 (Award Ends in 2001; *=multiyear)

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
* 40AANF0A1314	NOAA/NMFS	40,705	Inner and Middle Ear Pathology of Stranded Beaked Whales
* N00014-00-1-0902	ONR	200,000	Tomographic Ocean Imaging Facility
* N66001-00-1-8959	SERDP	169,988	Cetacean Inner Ear Models
* 40AANF902212 * 40AANF0A1329	NOAA/NMFS	25,600	Collection and Analysis of Beaked Whale Ear Structures

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government (on which Dr. Ketten is the principal investigator):

Current fiscal year (2003): 2;
 Fiscal year 2002: 3;
 Fiscal year 2001: 3.

Federal agencies with which federal contracts are held
(on which Dr. Ketten is the principal investigator):

Current fiscal year (2003):	NOAA/NMFS (2);
Fiscal year 2002:	NOAA/NMFS (2), NIH/NIDCD (1);
Fiscal year 2001:	NOAA/NMFS (2), SERDP (1).

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2003):	Research of Right Whale Hearing, Turtle and Tuna Hearing;
Fiscal year 2002:	Research on Turtle Blast Trauma and Damage Assessment;
Fiscal year 2001:	Research on Cetacean Inner Ear Models, Beaked Whale Ear Structures, Inner and Middle Ear Pathology of Stranded Beaked Whales.

Aggregate dollar value of federal contracts held
(on which Dr. Ketten is the principal investigator):

Current fiscal year (2003):	\$ 312,414;	(multiyear; awards end in 2003)
Fiscal year 2002:	\$ 246,066;	(multiyear; awards ended in 2002)
Fiscal year 2001:	\$ 236,293.	(multiyear; awards ended in 2001)

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government
(on which Dr. Ketten is the principal investigator):

Current fiscal year (2003):	2
Fiscal year 2002:	1;
Fiscal year 2001:	1.

Federal agencies with which federal grants are held
(on which Dr. Ketten is the principal investigator):

Current fiscal year (2003):	ONR (2);
Fiscal year 2002:	ONR/DURIP (1);
Fiscal year 2001:	ONR (1).

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2003):	Research on Functional Measures of Sea Turtle Hearing, Experimental Measures of Blast and Acoustic Trauma in Marine Mammals, Models of Whale Auditory Function;
Fiscal year 2002:	Acquisition (final) of CT Scanner for Imaging Facility;
Fiscal year 2001:	Acquisition (1 st phase) of CT Scanner for Imaging Facility.

Aggregate dollar value of federal grants held
(on which Dr. Ketten is the principal investigator):

Current fiscal year (2003):	\$ 1,817,128;	(multiyear; awards end in 2003)
Fiscal year 2002:	\$ 330,952;	(multiyear, award ended in 2002)
Fiscal year 2001:	\$ 200,000.	(multiyear, award ended in 2001)

**STATEMENT OF NINA M. YOUNG
DIRECTOR, MARINE WILDLIFE CONSERVATION
THE OCEAN CONSERVANCY**

*Before the
Subcommittee on Readiness
House of Representatives Armed Services Committee
March 13, 2003*

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to present our views on provisions in the National Defense Authorization Act for Fiscal Year 2004 that would amend the Marine Mammal Protection Act (MMPA). My name is Nina M. Young; I am the Director of Marine Wildlife Conservation for The Ocean Conservancy.

The Ocean Conservancy (TOC) strives to be the world's foremost advocate for the oceans. Through science-based advocacy, research, and public education, we inform, inspire, and empower people to speak and act for the oceans. TOC is the largest and oldest nonprofit conservation organization dedicated solely to protecting the marine environment. Headquartered in Washington, D.C., TOC has regional offices in Alaska, California, Florida, and Maine.

I. SUMMARY STATEMENT

The MMPA is our nation's leading instrument for the conservation of whales, dolphins, sea otters, seals, sea lions, polar bears, and walrus. Although we are sensitive to the issue of military readiness; we do not believe that the Department of Defense has demonstrated that the proposed changes to the MMPA within the National Defense Authorization Act for Fiscal Year 2004 are necessary or even that the Defense Department has exhausted all administrative remedies available to it under existing law.

The Department of Defense proposes to modify the MMPA's definition of harassment, amend its incidental take authorization process, and create a separate broad categorical exemption for military readiness activities. The proposed changes in the definition of harassment and changes in the incidental take authorization process for military readiness would severely undermine the precautionary nature of the Act, remove key conservation elements that restrict the scope of the incidental take to small numbers of marine mammals within a geographic region, and significantly raise the threshold that triggers the Department of Defense's obligation to secure authorization to conduct activities that have the potential to harass marine mammals. The proposed definition and incidental take authorization would not only increase injuries and deaths of marine mammals, but also diminish transparency, result in a loss of scientific research and mitigation measures, require federal agencies to make difficult, if not impossible, scientific judgments about whether a given activity is subject to the Act's permitting and mitigation requirements, and impair enforcement of the Act. The end result would be that many military readiness activities would either be exempt outright or could evade the Act's requirements by relying upon the uncertainty and ambiguity created by this new language.

Since 1994, when the MMPA was last amended, the Department of Defense has applied for over twenty incidental take and harassment authorizations. None of these applications has been denied, and most have been issued within the expected or required timeframes. The Department of Defense has failed to show that the existing incidental take process is overly burdensome, let alone that the proposed statutory changes are needed. To the contrary, it appears that the program is functioning much as Congress intended. Rather than amend the statute, we believe that improved coordination and advanced planning may be the most expedient way to achieve both marine mammal conservation and improve efficiency in the issuance of permits for military readiness activities.

To add insult to injury, the proposed exemption for national defense effectively creates an escape clause which allows the Defense Department to bypass the incidental take permitting process altogether. Moreover, this exemption is not even limited to the incidental take permitting process. As written, it authorizes the Secretary of Defense to exempt "any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement" of the MMPA for reasons of national defense for a potentially unlimited number of successive two-year periods. The Department of Defense has failed to demonstrate that an irreconcilable conflict exists within the incidental take authorization or other provisions of the MMPA or that the flexibility currently provided under the Armed Forces Code is insufficient to merit such a comprehensive and wide-ranging exemption—one that could render the MMPA's conservation goals and mandates virtually meaningless.

Given the significant risks of changing these provisions in the MMPA, The Ocean Conservancy and other interest groups should be given the opportunity to work constructively with the committees of jurisdiction and the agencies to address the concerns of all parties. Adopting significantly flawed changes to the harassment definition and incidental take authorizations in the National Defense Authorization Act, coupled with the proposed virtually unfettered exemption for national defense, would not only be disastrous for marine mammals, but would set a double standard by significantly limiting, or exempting altogether, the military from MMPA requirements that all other federal, state, and private actors must follow. We strongly recommend that Congress refrain from amending some of the most important provisions of the MMPA through this bill. We believe that the issues raised by the Department of Defense should be considered by the House and Senate committees of jurisdiction, after significant discussions with other federal agencies, scientists, and conservation groups, in the context of an overall MMPA reauthorization package.

Our more detailed comments are organized as follows. First, we provide background on the MMPA and its incidental take provisions. Second, we address the problems with the Defense Department's proposed changes to the definition of "harassment." Third, we address the proposed amendments to create an incidental take authorization process specific to military readiness activities. Fourth, we explain why the proposed statutory changes to the incidental take authorization process are not necessary. Finally, our testimony will address the proposed MMPA broad categorical exemption for purposes of national defense.

II. BACKGROUND ON THE MARINE MAMMAL PROTECTION ACT

A. Moratorium on Taking

The MMPA is the most comprehensive marine mammal conservation and management legislation in the world. Passed to rectify the consequences of "man's impact upon marine mammals, which has ranged from what might be termed malign neglect to virtual genocide," H.R. REP. NO. 707, 92d Cong., 1st Sess. 11 (1971) the MMPA, enforced by the U.S. Departments of Commerce and the Interior, governs every interaction within U.S. jurisdiction between an individual and a marine mammal. Its purpose is to protect marine mammal species of "great international significance, aesthetic and recreational as well as economic." Among the species protected under the Act are whales, dolphins, porpoises, seals, walruses, sea otters, manatees, and polar bears.

It is the goal of the MMPA that these species be "protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management... [in order to] maintain the health and stability of the marine ecosystem." 16 U.S.C. §1361 (6). Congress also mandated marine mammals are to be protected and managed so that they do not "cease to be a significant functioning element in the ecosystem of which they are a part" or be allowed to "diminish below their optimum sustainable population" (OSP). 16 U.S.C. 1361(2) (1994). A species or population stock that is determined to be below its OSP level, or is listed as endangered or threatened under the ESA, is designated as "depleted" under the MMPA.

Congress sought to achieve broad protection for marine mammals by establishing a moratorium on their importation and "take." The term "take" means "to harass, hunt, capture, or kill or attempt to harass, hunt, capture or kill any marine mammal." 16 U.S.C. 1362(13). However, certain activities may be exempted from this moratorium, such as: scientific research; activities designed to enhance the survival or recovery of a marine mammal species or stock; commercial and educational photography; first-time import for public display; capture of wild marine mammals for public display; incidental take during commercial fisheries; and incidental take during non-fishery activities.

B. Exemptions for Incidental Take

Under sections 101 (a)(5)(A) and 101 (a)(5) (D) of the MMPA, the Secretary of Commerce or Interior may waive the moratorium and issue a permit or letter of authorization for taking small numbers of marine mammals, provided he or she determines, using the best available scientific evidence, that such take would have only a negligible impact on the marine mammal species or stocks.

Under section 101(a)(5)(A) of the MMPA, the Secretaries of Commerce or Interior may authorize the taking of small numbers of marine mammals incidental to activities other than commercial fishing (covered by other provisions of the Act) within a specified geographical region when, after notice and opportunity for public comment, the responsible regulatory agency (either the National Marine Fisheries Service (NMFS) or the Fish and Wildlife Service (FWS))

determines that the taking would have negligible effects on the affected marine mammal species or stock, and that the take will not have an unmitigable adverse impact on subsistence harvests of these species. The Act also requires the Secretary to set forth permissible methods and levels of "take" within a specified geographic region as well as requirements for monitoring and reporting. Issuance of a "small take" authorization, also known as a Letter of Authorization (LOA), includes two comment periods, possible public hearings, and consultations prior to the promulgation and publication of regulations in the Federal Register. It can take from 6 to 12 months for the agencies to complete this process.

Section 101(a)(5)(D), added to the MMPA in 1994, provides a more streamlined mechanism for obtaining authorizations when the taking will be of small numbers of marine mammals by incidental harassment only. Under this provision, referred to as an Incidental Harassment Authorization (IHA), the Secretary is required to publish in the Federal Register a proposed authorization within 45 days after receiving an application. Following a 30-day public comment period, the Secretary then has 45 days to either issue or deny the requested authorization. Because the incidental harassment authorization process has eliminated the need for promulgating specific regulations on the incidental taking, IHAs provide individuals who wish to carry out or undertake relatively short-term activities that might inadvertently harass marine mammals an expedited means to acquire an incidental take authorization. By law, the entire process can run no longer than 120 days.

C. Definition of Harassment—The 1994 Amendment

The exemptions for incidental take are wedded to the definition of "harassment" since the definition establishes the regulatory threshold to allow the applicant to make an initial assessment whether a small take or an incidental harassment authorization is needed. The definition describes a range of impacts that the regulatory agencies must assess during the authorization process to determine whether to authorize the activity. In 1994, Congress amended the MMPA to differentiate between two general types of harassment: Level A, having the potential to cause physical injury and Level B, having the potential to impact behavior of marine mammals in the wild. The definition is as follows:

- (18)(A) The term "harassment" means any act of pursuit, torment, or annoyance which -
 - (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or
 - (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.
- (B) The term "Level A harassment" means harassment described in subparagraph (A)(i).
- (C) The term "Level B harassment" means harassment described in subparagraph (A)(ii).

III. PROPOSED CHANGES TO THE DEFINITION OF HARASSMENT

A. Proposed New Definition

The Department of Defense claims that the definitions of Level A and Level B harassment added to the MMPA in 1994 are overly broad and somewhat ambiguous. In an attempt to resolve this perceived problem, the Department of Defense has proposed the following definition:

For purposes of military readiness activities, the term 'harassment' means any act which--

- (i) injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or
- (ii)(I) disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering to a point where such behavioral patterns are abandoned or significantly altered; or
- (II) is directed toward a specific individual, group, or stock of marine mammals in the wild that is likely to disturb the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to migration, surfacing, nursing, breeding, feeding or sheltering.

B. Problems with the Proposed Definition

The most salient effect of this language is to raise the threshold of regulatory action. For Level A harassment, the proposed definition would shift from "has the potential to injure" to "injures or has the *significant* potential to injure." For Level B harassment, "potential to disturb" would become "disturbs or *is likely* to disturb;" and an addition would be made to the language governing behavioral disruptions, requiring that "natural" behaviors be "*abandoned or significantly altered.*" (emphasis added).¹

This new language would also introduce new uncertainty into the Act. Adding the term "significant" to the definition would take the Act into a scientific and policy arena that is beset by ambiguity. NMFS has struggled with this term and has yet to define it with regard to the "significant adverse impact" clause in the Act's "incidental take" provisions for commercial fishing (16 U.S.C. §§ 1383(g)(2), 1387(g)(4)). Currently, the state of marine mammal science will not yield a clear, practical definition of "significant potential" or of "significantly altered"; indeed, these terms are likely to generate more scientific questions than answers.

¹ The third subparagraph, which establishes a somewhat more conservative standard for behavioral impacts, would apply only to activities that are directed toward a specific individual, group, or stock of marine mammals, not to activities that take marine mammals incidental to their operation. This provision would not cover any of the activities for which the DoD has sought small take permits or incidental harassment authorizations under the MMPA.

The term “potential” is clear and requires no further evaluation of the significance of an activity’s likelihood to injure or disturb. It is protective of the species, requiring only the disruption of basic biological functions or behavioral patterns such as migration, breathing, nursing, breeding, feeding, or sheltering—impacts that are reasonably verifiable—rather than significant alteration of these biologically important behaviors, to trigger the Act’s prohibitions.

The bill also adds a new requirement to Level B harassment that natural behavioral patterns be disrupted to the point where such behavioral patterns are abandoned. Requiring the abandonment of critical biological behaviors for an action to constitute harassment violates the precautionary goals of the Act and sound scientific conservation principles. In addition, what constitutes “abandonment” of behavioral patterns under the proposed new definition of Level B harassment will vary according to species, gender, time scale, and the nature of the behavior itself. The proposed amendment offers no basis to determine what constitutes abandonment of behavioral patterns. For example, would abandonment of a nursing bout between an endangered right whale mother and calf be treated the same as temporary abandonment of the migratory path of a gray whale? In fact, it is unclear whether either event would count as “abandonment” under the revised definition.

Taken together, these changes would have a debilitating effect on enforcement. Under the terms of the Act, the Defense Department itself would have initial authority to decide whether its activities have the “significant potential to injure” marine mammals or are likely to “significantly alter” marine mammal behavior. A great many activities could simply evade the Act’s requirements by the Defense Department’s relying upon the uncertainty and ambiguity in this new language and not seeking authorization in the first place. For the public or NMFS to enforce the Act in these circumstances would be difficult.

The practical outcome is that many more marine mammals would be harmed by military activities. Potentially injurious activities that were once assessed, monitored, and mitigated under the Act would no longer enter the permit process. NMFS could not ensure that the impacts of such activities on populations or stocks would be negligible. In addition, small take permit and incidental harassment authorization mitigation measures and monitoring requirements that have been effective in protecting marine mammal populations and resulted in critical information on the impacts of a particular activity would be lost. Overall, the result of these changes is likely to be more injury and death of marine mammals, less mitigation and monitoring of impacts, less transparency for the public and the regulatory agencies, and even more controversy and debate.

IV. PROPOSED CHANGES TO THE MMPA’S SMALL TAKE AND THE INCIDENTAL HARASSMENT PROVISIONS

The Department of Defense proposes to create a separate incidental take authorization process for military readiness activities. While similar to the existing small take and incidental harassment authorizations in Sections 101 (a)(5)(A) and 101 (a)(5)(D) of the MMPA respectively, the proposed process eliminates key conservation elements that restrict the scope of the incidental take to small numbers of marine mammals while engaging in a specified activity within a specified geographic region.

A. Deletion of Requirement That Incidental Take Authorization Be Limited to Small Numbers of Marine Mammals of a Species or Population Stock

Sections 101(a)(5)(A) and 101(a)(5)(D) of the MMPA allow the Secretary to authorize the incidental take of only “small numbers of marine mammals of a species or population.” Although in restricting the take to “small numbers” of marine mammals the Committee acknowledged that it was unable to offer a more precise formulation because the concept was not capable of being expressed in absolute numerical limits; it made clear its intent that the taking should be infrequent, unavoidable, or accidental. H.R. REP. NO. 228, 97th Cong., 1st Sess. 19 (1981). Therefore, it is obvious that the incidental take authorization is not intended to provide the Department of Defense with the ability to take unlimited numbers of marine mammals. In addition, the Committee noted that this requirement is separate and distinct from the required finding that the taking of small numbers of marine mammals will have a negligible impact on such species or stock. Id.

The requirement that incidental take under these provisions be limited to “small numbers of marine mammals of a species or population stock” is an important and independent requirement that should continue to apply to all persons, including the Department of Defense. Deleting this requirement would allow increased and potentially unsustainable levels of injury or harassment. Although it is true that the bill retains the requirement that the Secretary find that the incidental taking have a negligible impact on the species or stock, without the “small number” limitation, it may be difficult to evaluate the effects of injury or harassment on annual rates of recruitment and thereby establish sufficiently stringent quantitative standards for negligible impact. The additional requirement in the existing law, that the take be restricted to small numbers of marine mammals, ensures that the biological consequence of that take will not hinder a marine mammal population’s ability to grow or recover.

B. Deletion of Requirement That Activities Take Place Within a Specified Geographical Region

Congress amended the MMPA in order to ensure that the specified activity and the specified region are narrowly identified so that the anticipated effect would be substantially similar. H.R. REP. NO. 228, 97th Cong., 1st Sess. 19 (1981). NMFS defines specified geographical region as “an area within which a specified activity is conducted and that has certain bio-geographic characteristics.” C.F.R. § 216.103. The Defense Department’s proposal would strike this requirement – despite its importance to environmental assessment under the Act, and its consonance with sound management of marine mammals.

Restricting the activities to a specified region is in keeping with the requirements that the incidental taking must have a negligible impact on a stock of marine mammals and ensure that the taking has the least practicable adverse impact on its habitat. NMFS criteria for stocks states that stocks should be defined on the smallest divisible unit approaching that of the area of take unless there exists evidence of smaller subdivisions provided by ecology, life-history, morphology, and genetics data. (NMFS 1995 and 1997). In combination with the “small numbers” limitation discussed previously, this fine-scale approach to defining stocks provides an

effective conservation and management strategy for restricting take geographically and numerically to prevent depletion of marine mammal populations.

In addition, geographic regions themselves serve different biological purposes for marine mammal stocks. Some areas are vital to foraging, others are migratory corridors, and still others are vital to breeding, calving, and reproduction. The biological significance of a particular habitat or region is critical for determining whether the taking will have a negligible impact on the population of marine mammals and result in the least practicable adverse impact on its habitat.

Removing the requirement that the incidental take be restricted to a specified geographic region is contrary to effective conservation and management practices that limit take to narrowly defined marine mammal stocks on a restricted geographic basis to avoid depletion. It also jeopardizes the MMPA's goals of habitat conservation as it undermines effective consideration of the biological role or significance of the habitat to that marine mammal stock.

C. Other Proposed Changes to the Incidental Take Provisions

The Defense Department has proposed a number of additional changes to the incidental take authorization that could impair the process of environmental review.

First, under current law, both the incidental take and incidental harassment authorizations must prescribe "permissible methods of taking by harassment pursuant to such military readiness activity, and other means of affecting the least practicable impact upon such species or stock and its habitat, paying particular attention to rookeries and mating grounds and areas of similar significance..." The Department of Defense proposes to remove the phrase "and areas of similar significance." This amendment is scientifically indefensible and could significantly limit the types of habitats to be considered, further eroding the conservation goals of this provision.

Second, the law currently provides for public notice and comment on small take authorizations. The bill, however, would limit that requirement to decisions to withdraw or suspend an already existing authorization (except, as under current law, when the Secretary determines that an emergency exists and therefore the notice and comment provisions do not apply). Perhaps this is an oversight, but there is no logical reason to provide notice and comment only on decisions to withdraw or suspend an existing small take authorization and not on the decision whether to issue such an authorization in the first instance.

Third, the incidental harassment authorization currently requires the applicant to apply and for NMFS to solicit public comments on that application through a notice in the Federal Register, "newspapers of general circulation, and appropriate electronic media and to all locally affected communities." In comparison, the bill requires only that the Secretary receive a "request" to trigger the public notice and comment requirement and limits notification to the Federal Register. This change could be interpreted to eliminate the application requirement thus reducing the ability for the public to effectively evaluate the proposed incidental harassment. By restricting notification to the Federal Register, this provision of the bill would also significantly curtail public notice, thereby limiting meaningful public participation on proposals that could have serious implications for private citizens.

Finally, the bill would add a provision stating, “Nothing in this chapter shall require disclosure of information classified in the interest of national defense.” We are concerned that specifically protecting classified documents from disclosure for purposes of environmental review will further undermine NMFS’s ability to do an effective environmental analysis and prescribe mitigation measures.

V. The Department of Defense Has Not Made a Compelling Case That These Statutory Changes Are Needed

A. Incidental Take Permits Are Routinely Granted on a Timely Basis

Since 1994, when the current definition of “harassment” was adopted, the Department of Defense has submitted six applications for small take authorizations and sixteen under its “incidental harassment authorizations,” one of which was subsequently withdrawn. As Assistant Administrator William Hogarth noted in his testimony before the Committee on Armed Services in March, 2002, no application for either a small take or incidental harassment authorization submitted by the Defense Department has ever been denied.

From the period 1994 to present, the Defense Department sought six small take authorizations. For four of these applications, it took an average of just over fifteen months from application date to the effective date of authorization. As noted above, decisions on small take applications can take from 6-12 months to promulgate regulations and issue the LOA. Fifteen months barely falls outside of that range.

In only two cases, applications to take marine mammals incidental to shock testing of the USS Seawolf and the deployment of the SURTASS LFA, the decision process took approximately three years. This was due to a myriad of factors, unique to these applications, including their scope, complexity, number of public comments received, and time required to comply with the National Environmental Policy Act.

Similarly, the incidental harassment authorizations averaged just over four months from application to effective date of authorization. Most of these fell within the statutory mandate of 120 days. In light of this information, the Department of Defense has not shown either that it is unable to comply with the existing permitting requirements or that the length of the existing incidental take process is burdensome. To the contrary, it appears that the program is functioning much as Congress intended.

B. Results of a GAO Study Support This Conclusion

The conclusion that the Defense Department has not demonstrated the need for major changes in the MMPA is consistent with a recent study, released last June, by the General Accounting Office (GAO). The GAO concluded that commanders throughout the Armed Forces continue to report a high level of combat readiness, and that the Defense Department has failed to document

either the adverse impacts on training or the increased costs associated with meeting its stewardship responsibilities.²

C. Opportunities Exist to Improve Implementation of the Act Administratively

The Defense Department's proposal to create a separate incidental take exemption process for military readiness activities would introduce substantial ambiguity and would eliminate critical elements from the authorization process. Rather than pursue dramatic legislative change, the need for which has not been demonstrated, we believe that the Department should look to non-legislative alternatives to further streamline the administrative process. In this context, Assistant Administrator Hogarth, in his March 2002 testimony, stated:

Our ability to be efficient stems in large part from our ability to discuss activities with our Navy counterparts in advance, and with an understanding of the overall activities and needs of the program. With respect to our regulatory program, our limited staff is directly related to our ability to meet the increasing demands by Navy and other agencies. However, to the extent the Navy and other action agencies can plan sufficiently far in advance of activities and provide us with adequate time to work with them at the earliest possible stages, the implications of the permit process should be minor.³

Based on these statements, and our own knowledge of how the current program functions, we believe there are a number of ways to administratively improve its implementation to address the concerns of the Department of Defense, without amending the statute or undermining its conservation objectives. We believe that this approach is the most expedient way to achieve both marine mammal conservation and to improve efficiency in the issuance of permits for military readiness activities. As a first step, we urge NMFS to undertake a programmatic review of the incidental take authorization program as a means to improve efficiency and meet the goals and mandates of the MMPA.

VI. PROPOSED EXEMPTIONS OF ACTIONS NECESSARY FOR NATIONAL DEFENSE.

Under subsection (e), Exemptions Of Action Necessary For National Defense, the Secretary of Defense may exempt any action or category of actions undertaken by the Department of Defense from compliance with any requirement of the MMPA if the Secretary determines it is necessary for national defense. The exemption is for a period of two years with the possibility of unlimited additional exemptions, each two years in duration. The effect of this provision is to create an escape clause that allows the Defense Department to bypass the incidental take permitting process entirely. Moreover, this exemption would apply broadly to any requirement of the MMPA for any action or category of actions undertaken by the Defense Department which the Secretary determines are necessary for national defense.

² General Accounting Office, Military Training: DoD Lacks a Comprehensive Plan to Manage Encroachment on Training Ranges (June 2000) (GAO-02-614).

³ Available at this time in transcript form from www.house.gov/hasc/openingstatementsandpressreleases/107thcongress/02-03-14hogarth.html.

We believe this exemption is excessively broad for four reasons. First, it would vest authority to grant an exemption entirely in the Secretary of Defense. Second, the exemption applies to “any action or category of actions undertaken by the Department of Defense or its components” – and so is not limited to individual activities, technologies, or exercises, allowing in theory for a sweeping application of this provision. Third, the exemption confers immunity from “compliance with any requirement” of the MMPA. Fourth, the Secretary of Defense can avail himself/herself of endless renewals of the exemption. Even more fundamentally, we believe the Department of Defense has failed to demonstrate an irreconcilable conflict exists within the incidental take authorization or any other provision of the MMPA that would merit such an exemption—one that would render the MMPA’s conservation goals and mandates virtually meaningless.

The Department of Defense has flexibility under the Armed Forces Code, 10 U.S.C. § 2014, to seek special accommodation and relief from any agency action that, in its determination, would have a “significant adverse effect on the military readiness of any of the armed forces or a critical component thereof.” If the accommodations it seeks are not forthcoming and an agreement is not reached directly with the head of the Executive agency concerned, it may take its case directly to the President. These provisions have never been invoked with regard to the MMPA, presumably because the Department’s requests for authorization under the Act have never been denied and because any mitigation required by the agency was judged not to have a significant adverse effect on readiness. The Department of Defense has not demonstrated that either the flexibility to seek special accommodation and relief under the Armed Forces Code is insufficient or that the broad exemptions it now seeks are warranted.

VII. CONCLUSION

Our groups support the military’s efforts to protect national security and are sensitive to the issue of military readiness. We do not believe, however, that the Defense Department has demonstrated that the dramatic changes proposed are necessary or that it has utilized the administrative remedies available to it under existing law. The Department of Defense’s proposals to modify the MMPA’s definition of harassment, create a separate incidental take authorization process for military readiness activities, and create a broad exemption to the MMPA, threaten to severely undermine the precautionary nature of the Act and lead to significantly increased harm to marine mammal populations.

We support a process, in the context of MMPA reauthorization, in which all stakeholders can work together to develop creative and collaborative approaches to demonstrated problems. We hope this Committee will allow us the opportunity to work constructively on alternative approaches with all of the affected agencies and organizations to try and address the Department’s concerns before any fundamental changes are made to this keystone conservation law.

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THE OCEAN CONSERVANCY
SCHEDULE OF FEDERAL AWARDS
March 10, 2003

Nina M. Young

Federal Grantor Program Title/Purpose	Federal CFDA Number	Grant/Contract Agreement Number Purchase Order	Award Amount	Duration of Time
<u>Environmental Protection Agency</u>				
Volunteer Monitoring Coordinator Training for Trainers Workshops	66.SSI	X827985-01-2	292,000	10/01/99-9/30/03
Program to increase public awareness and involve volunteer groups in monitoring, reporting, cleanup and prevention of ocean and shoreline debris program.	66.606	X825846-01-4	546,530	09/15/97-11/30/02
National Marine Debris Monitoring Program	66.606	X825845-01-4	887,011	09/15/97-04/30/03
Citizen Scientist Coral Reef Health Monitoring Project	66.605	X826957-01-3	387,000	11/09/98-11/08/02
Symposium on Ballast Water Mgmt. in the Chesapeake Bay	N/A	C6-98347201-0	16,145	09/20/01-09/30/02
Alaska Bering Sea Conservation Strategy Workshop	N/A	MM970230-01	25,000	07/15/99-07/31/00
<u>National Oceanic and Atmospheric Administration</u>				
USVI Coral Reef Health Monitoring Project	11-463	NA16FZ2959	66,016	10/01/02-03/31/04
<u>CONTRACTS & PURCHASE ORDERS FROM DOC</u>				
Purchase Order - Sea Turtle Spanish Manual	NOAA	40AANF044191	15,000	08/31/01-12/31/01
Purchase Order - Sea Turtle Spanish Manual	NOAA	40AANF112674	3,200	08/31/01-10/31/01
Purchase Order - MTSQ Vietnam Training Course	NOAA	40AANF110944	5,000	06/10/01-12/12/01
Purchase Order - RECON/CZMA Program	NOAA	40AANC111304	9,500	07/20/01-12/31/01
Purchase Order - RECON/CZMA Program	NOAA	40AANC001279	14,500	09/01/00-09/30/01
Purchase Order - RECON/CZMA Program	NOAA	40AANC1A4059	9,963	08/31/01-06/30/02
	NOAA	DG133C02SE0703	27,000	09/17/02-12/31/02
<u>CONTRACTS & PURCHASE ORDERS FROM DOI</u>				
Purchase Order - Sea Turtle Publication of DR Meeting	USFWS	401810M325	5,000	06/10/01-12/15/01
Contract - Research Upstream Reef Fish Population	USFWS	1448-40181-99-G-189	70,000	05/01/99-06/30/00
Contract - Research Upstream Reef Fish Population	USFWS	1448-40181-00-G-143	70,000	09/01/00-06/30/02

** TOTAL PAGE.02 **



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**TESTIMONY OF LENNY SIEGEL
 EXECUTIVE DIRECTOR
 CENTER FOR PUBLIC ENVIRONMENTAL OVERSIGHT
 BEFORE THE READINESS SUBCOMMITTEE
 HOUSE COMMITTEE ON ARMED SERVICES
 MARCH 13, 2003**

Summary

"Defense and the environment" is not an either-or proposition. To choose between them is impossible in this real world of serious defense threats and genuine environmental concerns. The real choice is whether we are going to build a new *environmental ethic* into the daily business of defense...— Dick Cheney, 1990¹

Mr. Chairman, members of the committee, thank you for the opportunity to address the challenge of balancing the competing, yet compatible objectives of military readiness, environmental protection, and community development. My organization, the Center for Public Environmental Oversight, works with the people who live and work on or near current and former military bases and ranges throughout the United States, from Puerto Rico to Alaska, from Maine to Hawai'i.

Secretary Cheney's vision is realistic, but the Department of Defense's new Readiness and Range Preservation Initiative (RRPI), proposed as Section 316 of the National Defense Authorization Act for Fiscal Year 2004, is a giant step in the wrong direction. Instead of making the Defense Department a leader in "environmental compliance and protection," the Initiative would give the military special treatment that is not necessary for it to fulfill its mission.

- **The Readiness and Range Preservation Initiative purports to resolve problems that have not been documented.**
- **The Readiness and Range Preservation Initiative appears designed to limit the Defense Department's obligations in areas unrelated to readiness.**
- **The Readiness and Range Preservation Initiative would endanger public health and the environment.**
- **The Readiness and Range Preservation Initiative is poorly drafted, and**

- **The Readiness and Range Preservation Initiative fails to support cooperative efforts of military officials, environmental organizations, and state, and local governments to address a common enemy, *urban sprawl*.**

I have been asked today to address the proposed changes to the Clean Air Act, as it applies to State Implementation Plans, and the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as they apply to munitions and explosive constituents. *I have seen no evidence that these three laws have ever interfered with readiness.* The impact of these laws on training and other readiness activities is purely hypothetical. In fact, even if regulatory agencies or third parties were to challenge training or other readiness activities using these statutes, they already provide the flexibility to balance environmental and military requirements on a site-by-site basis.

Furthermore, these proposals appear to address Defense Department objectives other than readiness. The language dealing with munitions response seems designed to minimize the Department's responsibility for cleaning up not only unexploded ordnance, but explosive constituents such as perchlorate. Even if the language is modified to clearly apply only to active munitions ranges, it would prevent regulatory agencies from addressing contamination that threatens public health and the environment—until it's too late—and it would undermine incentives for pollution prevention on ranges.

Similarly, the language exempting military pollution from Conformity requirements under the Clean Air Act seems more related to the military's plans for base closure and realignment than to readiness. Our population's right to breathe clean air should be a factor in decisions where to base or fly aircraft, and current law provides more than enough flexibility to accommodate public health concerns with military readiness activity.

The subsection of the proposal dealing with munitions and explosive constituents—what the military not so long ago called ordnance and explosive wastes (OEW)—continues an inglorious Pentagon tradition of addressing a significant, complex problem through convoluted definitions that invite litigation while failing to resolve genuine, significant issues. It doesn't help resolve disputes over whether an inactive range is closed. It opens up a loophole in the oversight of open burning/open detonation (OB/OD) facilities on operational ranges. It appears to ignore ordnance and explosive wastes that were never used on operational ranges. According to some legal

experts, it still doesn't definitively exclude former ranges from the exemptions the Department says it is seeking only for operational ranges.

While the threat of these laws to military readiness is purely theoretical, the risk to public health and the environment at operational ranges is real. For example, a dozen years ago, Army researchers at Fort Richardson's Eagle River Flats range, in Alaska, concluded that military munitions containing white phosphorous caused high waterfowl mortality. At the Massachusetts Military Reservation, Royal Demolition Explosive (RDX) and perchlorate are poisoning an aquifer that is the sole source of drinking water for hundreds of thousands of people. At the Aberdeen Proving Ground, the public water supply comes, in part, from on-base wells, and those wells are also contaminated with perchlorate. These are hazards that should be addressed at the source, not when they cross arbitrary boundary lines.

Section 2018 of the Defense Department initiative would make air pollution from certain military activities invisible to the agencies responsible for protecting our air. Four of the five exemptions in the proposed law would be permanent. It could potentially expose tens of millions of Americans to unhealthy levels of air pollution. State and local air quality officials would be forced to allow ongoing exposures to dirty air or to restrict private economic activity to compensate for unchecked military pollution. Furthermore, because the list of routine activities excluded from "military readiness activities" does not include power plants, it's conceivable that the Defense Department expects to shoehorn these polluting activities into the proposed readiness exemptions.

Despite the military's sweeping efforts to rewrite the nation's foundational environmental laws to suit its convenience, environmental and community groups, as well as state and local governments, are willing to work with Congress, the military, and other government agencies to counter "encroachment"—that is, the impact of community development on military readiness activities. I believe that encroachment is interfering with the armed services' ability to train, test, fly aircraft patrols, and conduct other readiness activities. Contrary to the official Pentagon message, military officers and officials in the field suggest that the threat comes from urban sprawl, not laws designed to protect human health. In my home state of California, a wide range of stakeholder groups supported legislation, proposed by the Navy on behalf of the armed services, to require local jurisdictions to consider military readiness in their planning activities. That law,

S.B. 1468, is now on the books, but it is not being implemented yet, because the Pentagon has not yet figured out how to provide a small amount of funding.

Environmental groups, community organizations, and others in California and many other states stand ready to implement cooperative initiatives that promote smart growth, to create or sustain livable communities, to protect the environment, and to enhance the sustainability of military operations. *I call upon the Defense Department to focus on the real problem, development that encroaches upon military bases and ranges, rather than use readiness concerns to undermine the health of the people and natural resources that it is sworn to protect.*

I. THE READINESS AND RANGE PRESERVATION INITIATIVE PURPORTS TO RESOLVE PROBLEMS THAT HAVE NOT BEEN DOCUMENTED.

In my visits to military facilities across the country, I have been convinced that encroachment is hampering, and is likely to further restrict, the U.S. armed forces' ability to train, test, and fly aircraft. But I have never seen, nor have I heard of any limitations on military readiness activities caused by the Clean Air Act, the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

RCRA/CERCLA

Department of Defense officials warn that a lawsuit brought by Alaska Community Action on Toxics and others against the Army, at Ft. Richardson, Alaska, could set a precedent constraining munitions training throughout the United States. I've read that complaint, and I've consulted legal experts and Alaska regulators. The only element of that lawsuit that in any way might impact training is a plea that the Army seek a permit, not under RCRA but the Clean Water Act.

I am familiar with one location where environmental regulators have issued a cease-fire order, Camp Edwards on the Massachusetts Military Reservation (MMR). When it was shown that explosive constituents were poisoning the sole-source aquifer that provides drinking water to hundreds of thousands of Cape Cod residents and visitors, U.S. EPA issued an order halting the use of high-explosive weapons on that range. Though RCRA has played a small role at MMR, the order restricting training invokes the Safe Drinking Water Act.

Even if, through some unprecedented regulatory action or third-party litigation, these laws were to threaten military readiness activities, the President has the clear authority to issue an ex-

emption. In fact, Presidents Clinton and George W. Bush have repeatedly invoked the RCRA Section 6961 (a) exemption at Nevada's Groom Lake range. And there wasn't a threat to readiness at Groom Lake. The proposed application of RCRA at this site dealt with the management of toxic wastes, not military munitions.

Finally, some might argue that the requirement to conduct cleanup on operational military ranges in itself might, in some unprecedented circumstances, threaten readiness, if munitions and explosive constituents are considered a hazardous waste. However, both RCRA Corrective Action and CERCLA provide decision-makers with the flexibility to consider a wide range of factors in setting cleanup goals and selecting remedies. Dozens of military airfields, for example, are undergoing remediation with minimal interference to flight operations. Moreover, the Air Force routinely clears unexploded ordnance from its ranges, and the Marine Corps does the same at its Twenty-Nine Palms, California training facility, because they believe ordnance clearance actually supports readiness by sustaining and extending the life of training ranges. Even at Camp Edwards, National Guardsmen continue to train despite the ongoing EPA-directed environmental response.

Clean Air Act

As for the Clean Air Act, I've never even heard of *inaccurate* examples of that law getting in the way of readiness. Remember, aircraft emissions are not directly regulated. Unlike power plants, for example, private and military airfields don't obtain permits for pollution from aircraft. Still, should the conformity provisions unexpectedly pose a threat to readiness. Section 118 of the Clean Air Act provides the President with the authority to exempt Defense activities from the law upon a finding of "paramount national interest." But that's not all. The general conformity regulations allow the Defense Department to override clean air requirements in national emergencies such as war and terrorists attacks. And on top of that, the Defense Department may conduct "routine movement" of ships and aircraft, activities already exempt from Clean Air permitting requirements, without regard for their impact on Implementation Plans under the law.

When the Defense Department proposed these same Clean Air Act exemptions last year, the nation's non-partisan associations of state and local air pollution control officials declared the amendments unnecessary. They pointed out that the Clean Air Act already provides the Defense Department ample flexibility to carry out its mission, and importantly, that "the significant ad-

verse air quality impacts that could result from such exemptions could unnecessarily place the health of our nation's citizens at risk." (I have attached a copy of that letter.)

II. THE READINESS AND RANGE PRESERVATION INITIATIVE APPEARS DESIGNED TO LIMIT THE DEFENSE DEPARTMENT'S OBLIGATIONS IN AREAS UNRELATED TO READINESS.

So why then, is the Defense Department investing in the passage of these provisions of the Readiness and Range Preservation Initiative? I believe it is hoping to use the growing concern over encroachment to buy relief from some of its more long-term environmental challenges.

RCRA/CERCLA

As a growing number of Members of Congress are recognizing, millions of acres of our land are contaminated with ordnance and explosive wastes. People are finding old bomb and shells in new subdivisions in Texas and North Carolina. Parklands and wildlife refuges, from California to Indiana to Maryland and New York, are literally minefields of unexploded ordnance. Last year the Defense Department estimated the cost of cleaning up or restricting access to former ranges—"closed, transferred, and transferring" ranges in the regulatory vernacular—at \$15 billion. I think we're all hoping that the inventory of such sites, due for report to Congress this spring, will provide an accurate accounting of the sites, their acreage, and their projected response costs.

Legal experts, including a bi-partisan group of 33 state Attorneys General, challenged the Defense Department's 2002 proposal, stating that the proposed exemption of operational ranges from hazardous waste laws would carry over to ranges when they were closed. That is, the RRPI proposal could undermine the already contested oversight authority of regulators at former ranges.

Defense officials assert otherwise, and this year they added a clause that *seems* to restrict the restriction on oversight to responses on operational ranges only. However, the new language submitted by the Defense Department does not do the job. It's hard to comprehend the convoluted language in the Defense proposals, but here's how it falls short.

- The new language only refers to just one subparagraph in the RCRA section of the legislation.

- The proposed language still exempts from oversight certain munitions and explosive constituents—used in research and development, for example—that were never on operational ranges.
- The military can avoid environmental response at closed ranges on active installations simply by continuing to consider them “inactive,” a subset of operational ranges. This is not a hypothetical suggestion. In 2000 a U.S. EPA survey suggested that many inactive ranges across the country should be assessed and probably classified as closed:

The Redstone Arsenal in Huntsville, Alabama, is a facility that contains 23 ranges, 22 of which are inactive. This facility provides several good examples of ranges that have been inactive for years, but which have not been officially closed by DoD. For example, the Inactive Mustard Gas Demilitarization Site/Range at the Redstone Arsenal was last used in the mid- to late-1940s and is currently forested and partially underwater. Given current environmental conditions, nearby populations, and today’s more stringent regulatory framework, it is highly unlikely the facility will be used for mustard gas demilitarization again.¹¹

Even if these loopholes were fixed, the RRPI proposal would still prevent regulatory agencies from doing their job—protecting public health and the environment—on operational ranges. Rarely has anyone proposed requiring the widespread clearance of munitions or explosive constituents from active ranges. Even at Ft. Richardson, the plaintiffs are merely seeking a remedial investigation and feasibility study under CERCLA, steps that are unlikely to lead to full-scale ordnance clearance as long as the range remains active. Yet there are instances—I provide examples below—where regulators should act.

The key point here, however, is that the Defense Department has proposed the new, restrictive definition of when munitions and explosive constituents become hazardous wastes because it is attempting to eliminate potential cleanup requirements, not to enable our nation’s armed forces to conduct essential readiness activities. This applies not only to ordnance itself, but to the energetic chemicals known as “munitions constituents” in the Defense proposals.

Clean Air Act

In the Department of Defense’s sectional analysis of Section 2018, it finally provided a clue as to what it felt is “broke” and needs fixing. It wrote, “Under the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas.” That is, as it moves toward a new round of base realignment and closure (BRAC), the Defense Depart-

ment doesn't want the impact of air squadron transfer to be a factor in its decisions. This was the issue in the mid-1990s, when the Navy shifted attack aircraft squadrons to the Lemoore Naval Air Station, in California's polluted Central Valley. Though the aircraft, additional mobile ground equipment, and increased employee vehicular traffic were not subject to air permits, they were all evaluated as part of the base's conformity with the Implementation Plan. The new basing arrangement was approved only after the Navy obtained emission reduction credits from a nearby, closing installation, Castle Air Force Base.

Long-term changes in the deployment of military aircraft are an important issue, but they are not directly a readiness issue. They should be debated in the context of BRAC or military construction, not authorized in an initiative that the Pentagon asserts is designed to shield military readiness activities from encroachment.

III. THE READINESS AND RANGE PRESERVATION INITIATIVE WOULD ENDANGER PUBLIC HEALTH AND THE ENVIRONMENT.

In RRPI, the Department of Defense proposes to roll back key statutes that form the foundation of America's bi-partisan framework of environmental protection. The requirements that the Department seeks to relax are not merely technicalities or check-off boxes. They target identifiable hazards to public health, public safety, and our natural ecosystems.

Like many other institutions, the Department of Defense has a legacy of environmental mismanagement. According to the *Defense Environmental Restoration Program Annual Report to Congress for Fiscal Year 2001*, the military's 126 most costly sites, contaminated with toxic substances as well as munitions, will cost well over \$28,000,000,000 to address. We, as taxpayers, will be paying the bill on that legacy for decades to come. Over the past two decades, however, it has made important strides forward. Congress has appropriated funds for environmental security. Individuals within the Department have shown genuine leadership. And regulatory oversight has brought along those who have not seen environmental protection as a priority.

The laws and programs that bring cleanup not only deal with legacy wastes; they encourage the prevention of future problems. Under pressure from outside, elements of the military are integrating pollution prevention and environmental management into their operations, as Secretary Cheney suggested in 1990.

Environmental regulation is necessary, not only to encourage reluctant officials to do their jobs properly, but to see that competent, motivated military leaders can obtain funding for their projects. Environmental compliance projects at the Defense Department, such as improvements in RCRA-governed treatment, storage, and disposal, are funded not simply on need, but according to the level of external regulatory requirements that they address.

RCRA/CERCLA

While the threat to readiness from these environmental laws is theoretical, the impact of munitions and explosive constituents on the environment is real. Under the Defense Department's proposals, regulatory agencies would be unable to insist on access controls to keep the public off military ranges—to prevent incidents such as the death of a Mississippi teenager near Camp Shelby in 2000. Under its proposal, states would no longer be able to regulate the operation of open burning/open detonation pits located on operational ranges, such as Ft. Carson, in Colorado.

Pentagon lawyers hypothesize that a Ft. Richardson lawsuit could hamper readiness, but they don't explain why Alaskan communities are concerned. In the early 1990s, the Army itself concluded that white phosphorous from munitions on the Fort's Eagle River Flats artillery range was killing substantial numbers of waterfowl. Though that problem was successfully addressed, cooperatively by Alaska state regulators and the Army, under CERCLA, RRPI would remove that regulatory authority. (I have attached an Army article documenting this history.) In fact, as a result of that effort, the Army no longer uses munitions containing white phosphorous at Eagle River Flats, and it limits when it trains with high explosives to avoid the re-suspension of residual white phosphorous wastes.

Perhaps the most pernicious aspect of this particular language is the Defense Department's proposal to exempt contamination from the nation's hazardous waste laws until it has migrated across the boundary line of the range upon which it has been deposited. Please note that explosives and propellants are toxic chemical compounds. Some of the nation's most contaminated public and private properties—on EPA's "Superfund" list—are Army Ammunition Plants and facilities that have produced, tested, and demilitarized military rockets.

There is growing evidence that most current and former military munitions ranges, not just production sites, are polluted with explosive chemicals such as TNT, RDX, and perchlorate. As I mentioned earlier, EPA restricted military exercises involving the use of high explosives at

Camp Edwards, Massachusetts Military Reservation, under other statutes, because RDX and perchlorate have poisoned Cape Cod's drinking water supplies. Similarly, two distinct communities adjacent to the Aberdeen Proving Ground, in Maryland, have learned recently that their drinking water is contaminated with perchlorate emanating from that installation. RRPI would prevent state and federal regulators from using RCRA and CERCLA to address such sites until the pollutants have migrated off base. In fact, even after the plumes have crossed facility boundary lines, source areas, under RRPI, would remain off limits to the regulatory agencies. (I have attached articles about MMR and Aberdeen.) Ironically, if this proposal is enacted, the military might even argue that regulators have no authority to protect military personnel and their families from contaminated water supplies that never leave their bases.

Furthermore, it's unlikely that this happened by accident. In preparing my testimony, I compared the Defense Department's RRPI language with the EPA's Military Munitions Rule, the current legal authority on the subject. As you may recall, EPA promulgated the Munitions Rule in 1997, as directed by Congress in the Federal Facilities Compliance Act of 1992, to determine when munitions become a hazardous waste. Defense Department lawyers drew from the Munitions Rule, which does not cover munitions constituents, in developing the RRPI language, so they must have made conscious decisions to include munitions constituents among the classes of items to be excluded from the hazardous waste laws. It appears that the Department is looking for one more way to absolve itself of its massive projected liability—reportedly billions of dollars nationally—for the characterization and remediation of perchlorate and other energetic contamination.

Clean Air Act

The case against the Clean Air Act modifications is much more simple. Emissions from military aircraft and other readiness activities would be exempt from the most significant regulatory tool for addressing them, potentially exposing tens of millions of people to dirty air. That is, military pollutants would infiltrate our lungs and be visible in our skies, but they would disappear from the bi-partisan regulatory framework we have built to protect ourselves.

The Clean Air Act exemptions in this bill are not simply unjustified; they represent sweeping and unprecedented permission for military air pollution—unlike other sources of air pollution from industry, government or even the public—to escape regulation under the Clean Air Act. Air pollution from military readiness activities would be allowed to cause or contribute

to violations of health-based air quality standards for smog, soot, and carbon monoxide; to increase the frequency or severity of such violations; or to delay timely attainment of the standards or interim milestones. Worse, to cover up the harm caused by these exemptions, the bill actually *defines* dirty air to be clean.

Under this legislation, states and local communities would lose their ability to influence new military basing plans, such as those forthcoming under the 2005 BRAC round, based upon their air pollution impact. Unable to influence the growth of military operations, they might be forced to restrict private growth—or place the public at risk of even more exposure to unhealthy air.

While I recognize the military's prerogative to override community concerns when absolutely necessary for paramount national security interest or national emergencies, I believe it is imperative that clean air and other natural resource concerns remain a factor in decisions on the long-term basing of military aircraft.

IV. THE READINESS AND RANGE PRESERVATION INITIATIVE IS POORLY DRAFTED.

Earlier I warned that the proposed RRPI language leaves ambiguous the Department's intent to restrict the changes in the law to operational ranges. I challenge any mere mortal—that is, someone who is not a lawyer specializing in hazardous waste law—to sort through the maze of paragraphs and clauses in this section.

That language is confusing because the Defense Department has once again resorted to the modification of definitions instead of directly addressing a problem. I have repeatedly suggested that the Department, regulators, and representatives of the affected public cooperatively describe the unique features of munitions-related waste, and once they determine what must be done to protect both the public and response personnel from explosive hazards, that they together propose statutory or regulatory solutions. This language not only fails to identify and resolve key issues, but it invites, through its web of interlocking definitions, years of litigation.

The Clean Air Act amendment suffers from its own complexities, but I wish to call your attention to a simple, fixable problem with the wording. In defining routine installation support functions not subject to the proposed statutory changes, the definition of "military readiness activities" excludes schools, housing, recreational facilities, etc., but it does not specifically ex-

clude from readiness activities the installation function that has generated the most heat in inter-agency debates over air pollution: electrical power plants. If indeed the Defense Department is not using readiness to address yet another problem, it should have no problem adding such facilities to the exclusion in the definition.

V. • THE READINESS AND RANGE PRESERVATION INITIATIVE FAILS TO SUPPORT COOPERATIVE EFFORTS OF MILITARY OFFICIALS, ENVIRONMENTAL ORGANIZATIONS, AND STATE, TRIBAL, AND LOCAL GOVERNMENTS TO ADDRESS A COMMON ENEMY, *URBAN SPRAWL*.

I first learned about encroachment a few years ago when I was invited to address Air Force Explosive Ordnance Disposal (EOD) specialists, from throughout the country, at Luke Air Force Base, in Arizona. I had been invited, by the way, to explain the public's concern about ordnance and explosive wastes on military ranges. My driver, an EOD Sergeant, pointed out, one-by-one, the new residential developments that stretched across the desert toward the base. A few more, he said, and the jets wouldn't be able to fly.

Across the country, from Ft. Stewart, Georgia to Nellis Air Force Base, Nevada, to the Navy SEALs' Camp La Posta mountain training base in the southern California desert, development or proposals for development are threatening the armed forces ability to fly planes, maneuver, and conduct other readiness activities. Unchecked urban growth, not environmental protection, is the problem. At some locations, such as Beale Air Force Base, community leaders have already made the link. Last month I took part in a community meeting in Marysville, California, in which local officials and residents of the semi-rural communities adjacent to the base opposed the construction of a new city on the base's fenceline, both because it would undermine their lifestyles *and* because it would encroach upon the Air Force's operations.

Last year environmental and community organizations supported the buffer zone provisions of RRPI, and they stand prepared to support additional measures designed to resolve encroachment problems constructively. Some states have passed, or are considering legislation designed to integrate readiness into local planning activities. For example, my own state of California, on the front lines of the encroachment battle, enacted S.B. 1468 last year. This legislation, proposed by the armed services, drew widespread support and no visible opposition.

Admiral J.L. Betancourt, Commander of the Navy Region Southwest, wrote Governor Gray Davis urging him to sign the bill. He explained, "We applaud this as an effort to finally rec-

ognize that long-term operations of military installations must involve a partnership between state and local agencies and the military. In addition to providing critical protection for military installations at a time of unprecedented growth in California, S. B. 1468 provides needed consideration of designated air space and military training routes." (I have attached the entire letter.)

This initiative from the field deals not with hypothetical problems, such as those addressed by the RCRA/CERCLA and Clean Air language in RRPI, but genuine threats to military operations. For example, developers are proposing to build a new city in the Antelope Valley, north of Los Angeles, that would severely encroach upon military training and testing flight routes. Environmental groups are likely to oppose this development as well, because it represents the worst in urban sprawl.

S.B. 1468 would provide the military, environmental organizations, and local planning agencies with the tools to question the proposed Antelope Valley development. But S.B. 1468, as designed by its military proponents, does not come into force unless the Defense Department provides a small amount of funds to support the additional local planning required—it's the whole issue of unfunded mandates. If Congress really wants to fight encroachment where it counts, legislation and appropriations to support S.B. 1468 and similar initiatives in other states would go much further than RRPI.

In conclusion, the Clean Air Act and munitions sections of RRPI would do nothing to enhance readiness; they appear designed to deal with the Pentagon's concerns over cleanup and base realignment; and they would subject the public and the environment to more unhealthy contamination. Instead of taking on environmental organizations, the communities who live near military installations, and state regulatory agencies, Congress and the Department of Defense should join these groups in addressing the real issue and fight a common enemy, urban sprawl.

¹ Dr. James Arnold Miller, "Moving Toward a Comprehensive and Long-Term Department of Defense Environmental Strategy: The Report of the Forum on Our Nation's Defense and the Environment," Department of Defense, Office of the Deputy Assistant Secretary of Defense (Environment), September 6-7, 1990, p. 8.

² *Used or Fired Munitions and Unexploded Ordnance at Closed, Transferred, and Transferring Military Ranges: Report and Analysis of EPA Survey Results*, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, EPA-505-R-00-01, September 2000, p. 11.

TESTIMONY OF LENNY SIEGEL

ATTACHMENTS

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

May 2, 2002

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

The Honorable Bob Stump
Chairman
Armed Services Committee
U.S. House of Representatives
2120 Rayburn House Office Building
Washington, DC 20515

The Honorable Ike Skelton
Ranking Member
Armed Services Committee
U.S. House of Representatives
2120 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Stump and Congressman Skelton:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) – the two national associations representing state and local air pollution control officials – I write to you today to express concerns regarding potential changes to Clean Air Act (CAA) provisions as they relate to activities of the U.S. Department of Defense (DOD), and to urge against such potential changes during upcoming floor debate over DOD's authorization legislation for FY 2003.

It is our associations' understanding that, as part of your Committee's deliberations over H.R. 4546 – the National Defense Authorization Act for Fiscal Year 2003 – amendments to various environmental and public health statutes were considered. These amendments, which were based on recommendations by DOD, would provide broad statutory exemptions for purposes of military readiness. We are pleased that your Committee rejected many of these changes, including those to Section 176 of the CAA, relating to the conformity of federal actions (including those of DOD) to federal or state implementation plans for attaining health-based National Ambient Air Quality Standards. STAPPA and ALAPCO believe that such exemptions are unnecessary, in that the CAA already provides DOD ample flexibility to carry out its duties during times of war and

emergency, and we urge you and your colleagues to continue to reject these exemptions as you take up DOD's authorization legislation on the House floor next week.

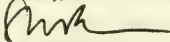
Under Section 118 of the CAA, the President may exempt DOD from any requirements of the Act upon finding that it is of "paramount interest of the United States to do so." Further, the federal regulations implementing the CAA's "general conformity" provisions from which DOD specifically seeks exemption, also allow DOD to suspend compliance in the case of emergencies (which, by definition, include terrorist activities and military mobilizations) and further, permit DOD to conduct routine movement of material, personnel and mobile assets, such as ships and aircraft, provided no new support facilities are constructed.

In light of the broad statutory and regulatory flexibilities already provided, we do not believe that additional CAA exemptions are necessary in order for DOD to conduct military readiness activities. Further, we believe the CAA exemptions sought by DOD would, essentially, serve only to allow routine, non-emergency activities that require the construction of additional support facilities to skirt important environmental requirements. The significant adverse air quality impacts that could result from such exemptions could unnecessarily place the health of our nation's citizens at risk.

STAPPA and ALAPCO urge you and your colleagues to reject actions to exempt DOD from CAA requirements. If, however, such actions are to be further pursued, we respectfully request that Congress allow for full participation by all interested parties, including state and local air pollution control officials, and that other congressional committees with jurisdiction over CAA issues also be included.

If you have any questions, or if STAPPA and ALAPCO can provide any further information, please do not hesitate to contact me at (202) 624-7864.

Sincerely,



S. William Becker

cc: The Honorable W.J. "Billy" Tauzin
The Honorable John D. Dingell
The Honorable Joel Hefley
The Honorable Solomon Ortiz

White phosphorus linked as cause of waterfowl deaths at Alaskan firing range



Cold Regions Research and Engineering Laboratory
Public Affairs Office

HANOVER, N.H.—After a year-long study, researchers at the Cold Regions Research and Engineering Laboratory (CRREL) and Dartmouth Medical School have determined the cause of high waterfowl mortality at the Army's Eagle River Flats firing range in Alaska.

The cause of death for many of the ducks and swans appears to have been the ingestion of white phosphorus particles left from smoke-producing shells fired into the range.



Eagle River Flats, a salt marsh wetland and Army artillery range, is on Fort Richardson, 15 miles north of Anchorage. Thousands of artillery rounds have been fired into the area since the early 1940s.

Beginning in the early 1980s, biologists began observing unusually high mortality rates among waterfowl who feed and nest in this area during spring and fall migrations.

Once careful observations of the impact area began, the biologists estimated that as many as 1,000 birds (pri-

marily pintails, mallards and tals) and a lesser number of swans were dying in the area each year.

Sediments and bird carcasses were examined for pesticides, heavy metals, and other pollutants, but no such contaminants were found.

Last spring, CRREL biologist Dr. Charles Racine, chemist Marianne Walsh and geologist Charles Collins were called in by USATHAMA to assist in the investigation of the problem.

Working on the hypothesis that munitions were causing the waterfowl mortality (when earlier studies has discounted disease or injury related to firing), they began an extensive program of water and sediment sampling on the flats.

During this observation and collection period, the researchers used innovative field techniques developed at CRREL for detecting explosives in sediments and water. Over 250 sediment and water samples were collected and analyzed, and the collection sites were precisely located. Water, sediment and vegetation characteristics were mapped throughout the flats with the computerized Geographical Resources Analysis Support System developed by the U.S. Army Corps of Engineers' Construction Engineering Research Laboratory (USACERL), located in Illinois. Residues of explosives were not found in the samples by field analysis, but submicroscopic analysis did reveal the presence of chemical pollutants.

The researchers also began to examine the soil for white phosphorus after a soil sample containing an unknown chemical stained smoking when it was opened in the lab.

By summer, Dartmouth toxicologist Dr. Bill Roebuck and local avian ecologist Dr. Leonard Reuma had joined CRREL researchers in Alaska to carry out field observations of dying waterfowl and to collect tissue samples.

These field observations and additional laboratory tests by Roebuck and Walsh strongly indicated that white

phosphorus was the contaminant responsible for the waterfowl mortality. The researchers theorize that particles of unoxidized phosphorus from the smoke-producing shells became embedded in the salt sediments where waterfowl feed. White phosphorus is highly toxic to birds and other animals.

According to Walsh, researchers will return to Alaska this spring and fall to determine the extent of the contamination and test remediation strategies.

Although firing of white phosphorus over Eagle River Flats has been halted, the material can persist for years in anaerobic sediments.

Remediation might include covering the phosphorus particles with soil or geotextile fabrics that would make the particles inaccessible to waterfowl and still allow normal plant growth.

Another possible means of neutralizing the phosphorus would be by adding an oxidizing chemical, such as hydrogen peroxide, to the salt marsh.

Based on information presented in a report written by the CRREL and Dartmouth researchers, USATHAMA has sent a memorandum to Headquarters, Department of the Army recommending that white phosphorus no longer be fired into Army wetlands.

USATHAMA has sent a memorandum to HQDA recommending that white phosphorus no longer be fired into Army wetlands.



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Guard reverses contamination stand

Military concedes testing may have a role in base pollution.

By KEVIN DENNEHY
 STAFF WRITER

As more results emerge from soil and water testing at Camp Edwards, it turns out that federal environmental officials and the military might not be that far apart on one conclusion: High-fire training was a likely factor in years of base pollution.

National Guard officials now agree that high-explosive training, not just improper disposal of munitions, might have played a part in Upper Cape groundwater contamination, something long asserted by the federal Environmental Protection Agency.

Preliminary data taken from monitoring wells near known targets on the "impact" area show high levels of Royal Dutch Explosive, or RDX, in the soil, and in the groundwater where the particles would have likely migrated.

Of 21 wells installed in early March, 14 have shown high levels of the explosive material, said Lt. Col. Joseph Knott, the MMR project officer with the National Guard Bureau. A team of Army scientists is scheduled to visit the base next month to confirm the data.

Knott also said that a meticulous archaeological search will confirm whether unexploded ordnance buried on the range long ago was another contributor to contamination.

The military, he says, has been charged to clean up the base, has been allocated the money to do it, and will now commit itself to do just that. He estimates it will cost about \$300 million.

It's an approach Knott admits is markedly different from previous approaches taken by the Guard, which previously denied that the firing caused any pollution.

Now, the military is confronting the results.

Congressional meeting today

"If it's bad for the Army, so be it," Knott said. "We want to clean (MMR) up. We've already agreed to clean up whatever's there ... Now we have to prove what is there, how big and how wide, and what's the best way to clean it."

Guard officials will explain the latest findings in the regular meeting with staff members from the Massachusetts Congressional delegation today in Washington.

At the meeting, the military will also update legislators on recently emerging reports from defense contractors that describe troubling environmental procedures on the Cape base through the years.

One report from defense contractor Textron Systems detailed years of inappropriate waste disposal and depleted uranium loading under little military oversight.

While groundwater pollution has been a given for years, Guard officials have argued that the past practices of disposing of munitions - usually burying them or blowing them up - was the sole cause.

Federal EPA officials, however, have contended that training also contributed to the contamination.

"It's hard to explain the contamination coming from the high-use target range from anything but training," said Elizabeth Higgins of the EPA.

Potential new attitude

Higgins said she hopes the military's acknowledgment that training might have been a problem will mark a new attitude at the base.

"We hope it represents a shift in the Department of Defense's attitude about how to grapple with these contamination problems," she said.

"We'll all get to the cleanup a lot quicker if we're not arguing about the causes of it."

The military fired high-explosive weapons at the base until 1985, and mortar rounds until 1997.

Knott said yesterday that the Guard has long acknowledged that training might have been a cause, but would not comment until there was scientific data.

For some legislators, the latest data are no big surprise.

"From past meetings and reports, it has seemed quite evident that training has had an impact," said Mark Forest, an aide to U.S. Rep. William Delahunt.

Over the next month, the Guard will undertake a \$4 million archaeological dig for unexploded ordnance, or UXO, in what Knott calls a first-in-the-nation test. Workers will carefully dig into impact area soil in two four-acre lots. They'll separate scrap and ordnance and test the soil and water.

"That way, we'll be able to say, for MMR, this is what UXO are doing in the ground," he said.

Knott commended the EPA and area activists for their scrutiny of base activities, saying that they contributed to the ongoing cleanup. "They're making us work aggressively and fast," he said. "And that's why we're here."

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Bourne wells ordered shut

Traces of contaminant from base detected in Monument Beach.

By KEVIN DENNERY

STAFF WRITER

BOURNE - Traces of a carcinogen used in rocket propellants has already reached one of Bourne's water supply wells, forcing the town to shut down the well indefinitely.

While the level of contamination is barely measurable, military officials are concerned that the chemical perchlorate has migrated from Camp Edwards to community water supplies.

The chemical, which has been found all over the heart of the base, a legacy of decades of military training, was found in a well that tested clean just a few weeks ago. At that time, Bourne water officials shut down that well, and another nearby supply well, as a precaution, since several monitoring wells hinted that the troubling chemical was creeping off base.

The two wells will remain shut down indefinitely.

Two other Monument Beach supply wells, about 3,000 feet to the west of the others, have shown no trace of perchlorate and remain open.

While the military scrambled to find the extent of perchlorate contamination after the monitoring well detections last month, officials hoped they would have more time to respond before it reached the drinking water.

Combined, the four supply wells in Monument Beach provide about 70 percent of the drinking water for the Bourne Water District.

"We will not allow the pumping of any well that tests positive for a substance that may pose a health risk to our people," the Bourne Water District commissioners wrote to customers in a paid advertisement printed in today's Cape Cod Times.

Effects on thyroid

According to the federal Environmental Protection Agency, perchlorate is now considered a carcinogen, a substance that can cause cancer. The chemical can affect the thyroid gland, which can slow metabolism, growth and development.

Ralph Marks, the district's superintendent, said the two affected supply wells will remain shut down until more information is known.

Meanwhile, the military will continue to drill new wells in the area to determine the extent of contamination, the direction it is heading, and how close it is to the two remaining supply wells.

While it is unclear how widespread the contamination is, groundwater engineers know the contaminated water is moving toward Bourne at about a foot per day.

<http://www. CapeCodTimes.com/arc/time/2002/mar23/bn>

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Less certain is where it is in the aquifer, the sole source of groundwater for the Upper Cape towns.

"It's certainly looks like (the perchlorate) is a little farther than we had hoped," said Ben Gregson, program manager for the Impact Area Groundwater Study Office that is running the Camp Edwards cleanup.

Environmental regulators say it is wise to shut down the two wells nearer to the contamination.

"Everything that can be done, which is to be extremely cautious, is being done," said Elizabeth Higgins of the EPA's regional office.

Dave Terry, the director of the state Department of Environmental Protection's drinking water program, agreed.

"Since they don't need the water right now, why run it at this point?"

The Bourne Water District includes neighborhoods in Cataumet, Pocasset, Monument Beach and along the Cape Cod Canal. The district used about 460 million gallons of water last year.

Finding a standard

Since science has been able to detect perchlorate at low levels in the groundwater only recently, environmental regulators are still working out a safe drinking-water standard. Nationally, the EPA is pushing for a standard of one part per billion.

In the meantime, on Camp Edwards, where the military is spending \$300 million to clean up after decades of artillery and mortar firing, the standard being applied is 1.5 parts per billion.

The recent finding at the Bourne water supply well was about .4 parts per billion, just above the detectable limit, Gregson said.

Four of 12 planned monitoring wells - which can test water at 10-foot intervals down the water table - have already been drilled, Gregson said.

While the threat to the Bourne supply remains unknown, water superintendent Marks says the town must look quickly for alternative water supplies in case of emergency. The town doesn't need all four water supply wells right now. But summer may bring greater demand.

In response, the district is looking for a quick hook-up to the Upper Cape Water Supply Cooperative, which will provide three million gallons of water per day for the towns surrounding the Massachusetts Military Reservation. The Pentagon paid to find and tap into that water supply after base pollution contaminated billions of gallons of Upper Cape groundwater.

A year ago, Bourne was the only Upper Cape town that opted to not join the cooperative.

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From Friday's Sun

Group calling for cleanup of perchlorate in Aberdeen

1 well shut after chemical was detected this week

By Lane Harvey Brown
Sun Staff

October 3, 2002, 10:32 PM EDT

The community watchdog group that monitors environmental cleanup at Aberdeen Proving Ground called on the Defense Department Thursday to authorize an immediate cleanup of chemical contamination found in the town of Aberdeen's wells.

The call was made after tests this week found perchlorate, a chemical used in rocket fuel and explosives, in the town's treated drinking water at a level of 1 part per billion, the state's maximum allowable level.

The test results spurred city officials to shut down one well and halve production at two others.

"The Aberdeen well field is contaminated with perchlorate from military activities, and this contamination must be treated now," the Aberdeen Proving Ground Superfund Citizens Coalition said in a statement.

The Army is in "constant discussions with EPA" about the perchlorate issue, and is very concerned about avoiding public health hazards, John Paul Woodley Jr., assistant deputy undersecretary of Defense for environmental matters, said Thursday. He added that the Environmental Protection Agency has not issued a regulatory standard for perchlorate. "The first question is if the levels that have been found are hazardous to the people who are exposed to it," he said.

EPA spokeswoman Robin Woods said Thursday that it could be five years before a regulatory standard is adopted, but that the agency could alter that schedule.

Steven R. Hirsh, an EPA remedial project manager, said the agency can order a site cleanup without a regulatory standard. Asked whether such a measure is being considered at APG, he said, "Yes, that's a possibility."

Woodley said that if the EPA or the state identified hazards and recommended ways to deal with them, the Department of Defense "would be anxious to avoid a hazardous condition whether there was an order or not."

APG officials acknowledge that the perchlorate is probably the result of training exercises using smoke grenades and explosive devices in the northern corner of the training ground.

Perchlorate was discovered at the installation in March last year, and two still poorly defined "plumes" containing the chemical, ranging from 10 parts per billion to 20 parts per billion, have gravitated to some of Aberdeen's production wells, which are along the post boundary.

Perchlorate interferes with thyroid function and can cause neurological damage to fetuses, newborns and children, experts say. In some cases, prolonged exposure to perchlorate has been linked to thyroid cancer.

Thomas Zoeller, a professor of biology at the University of Massachusetts Amherst, said much remains to be learned about perchlorate. That is why advisory levels such as Maryland's tend to be low, he said.

The city and Army tested the finished water three times this week. One test detected the chemical in the water at 1 part per billion. The two subsequent tests found levels lower than the reporting limit of 1 part per billion.

Randolph C. Robertson, Aberdeen's director of public works, said Thursday he is confident that the city can maintain a safe supply of drinking water by curtailing the flow from the contaminated wells and using more county water.

"The water is safe," he said. "We wouldn't put it out if it weren't."

http://www.sunspot.net/sunp/haas/masc/pr/1004ary_00714g-bai%20water04

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RITSC

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p.4



DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
937 NO. HARBOR DR.
SAN DIEGO, CA 92132-0056

IN REPLY REFER TO:
5090
Ser N45/212
11 Sep 02

The Honorable Gray Davis
Governor of California
State Capitol
Sacramento, CA 95814

Dear Governor Davis:

RE: SB 1468 (Knight): SUPPORT

On behalf of all military installations in California, and as the Department of Defense Regional Environmental Coordinator, I am writing to state strong support for SB 1468's pioneering effort to address an issue critical to continued military readiness in California. For the first time, SB 1468 requires that key elements of City and County General Plans consider the military mission. We applaud this as an effort to finally recognize that long-term operations of military installations must involve a partnership between state and local agencies and the military. In addition to providing critical protection for military installations at a time of unprecedented growth in California, SB 1468 provides needed consideration of designated air space and military training routes. These areas are essential for our training of pilots and continued research, development, test and evaluation of military hardware.

As the sponsor of this bill through the legislative process, the military has worked closely with groups including the League of Cities, California State Association of Counties and the American Planning Association. We accepted clarifying amendments, where concerns were expressed. We also worked closely with your Office of Planning and Research (OPR) and agreed to several amendments suggested by OPR staff. In all, we are pleased that this bill has received strong bi-partisan support. After consideration by five committees, SB 1468 did not receive a single "No" vote in committee or on the floor of either house.

Absent the provisions embodied in SB 1468, long-term encroachment can severely impact, if not preempt, military land uses. We strongly support the bill to reflect the greater scope of the military mission in California, including significant training, research, development, test and evaluation, and operations comprising

Sep 11 02 03:10p

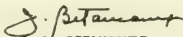
RITSC

532-3819

p.5

DoD's \$29 billion direct contribution to the California economy. We ask that you support and sign SB 1468.

Sincerely,



J. L. BETANCOURT
Rear Admiral, U.S. Navy
Commander, Navy Region Southwest

Copy to:
Senator Pete Knight
Senator Dede Alpert
Mr. Tal Finney
MGEN (Retired) William Jefferds

DISCLOSURE FORM FOR WITNESSES CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 107th Congress requires nongovernmental witnesses appearing before House committees to submit in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: LENNY SIEGEL

Capacity in which appearing: (check one)

☐ Individual

☒ Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: CENTER FOR PUBLIC ENVIRONMENTAL OVERSIGHT (CPEO)
PREVIOUSLY A PROJECT OF SAN FRANCISCO STATE UNIVERSITY; CURRENTLY OF THE
TIDES CENTER

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
B300-31-01-0	EPA	\$563,870	Researching community health
ILUA 454,500.01 (200-grant/water)	EPA	\$35,000	Brownfields Research local giving communities

Concern
Federal
Facilities

FISCAL YEAR 2001

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
B29329-01-0	EPA	\$130,04	Brownfields Research
B27990-01-0	EPA	\$281,700	Human Health Research
DE-5607-00EDP15	DOE	\$35,000	Land Use/contaminant research
PLEXUS	U.S. ARMY	\$26,400	Community Forums on Formerly Used Defense Sites

Federal
Facilities

FISCAL YEAR 2000

Federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
B27990-01-D	EPA	\$100,000	HUMAN HEALTH RESEARCH
B27989-01-D	EPA	\$125,500	② FEDERAL FACILITIES
ICMA (sub-grant contract)	EPA	\$16,000	BROWN FIELDS RESEARCH LAND USE CONTROLS FORUM - A COLLABORATIVE PROJECT

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2002): 1
Fiscal year 2001: 1
Fiscal year 2000: 1 } all are sub-contracts

Federal agencies with which federal contracts are held:

Current fiscal year (2002): EPA
Fiscal year 2001: ARMY
Fiscal year 2000: EPA } all are sub-contracts

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2002): BROWN FIELDS RESEARCH
Fiscal year 2001: 2 COMMUNITY FORUMS ON FORMERLY USED DEFENSE SITES
Fiscal year 2000: LAND USE CONTROLS RESEARCH & NATIONAL FORUMS

Aggregate dollar value of federal contracts held:

Current fiscal year (2002): \$35,000
Fiscal year 2001: \$24,450
Fiscal year 2000: \$16,000

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2002): 1;
Fiscal year 2001: 3;
Fiscal year 2000: 2

Federal agencies with which federal grants are held:

Current fiscal year (2002): EPA;
Fiscal year 2001: EPA (2), DOI;
Fiscal year 2000: EPA (2)

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2002): Human Health Research, Federal Facilities
Fiscal year 2001: Brownfields Research; Land Use Controls Research, see above
Fiscal year 2000: Brownfields Research; Human Health Research, Federal Facilities

Aggregate dollar value of federal grants held:

Current fiscal year (2002): \$ 353,870;
Fiscal year 2001: \$446,214;
Fiscal year 2000: \$ 225,500

Testimony of

Michael J. Bean

Chairman, Wildlife Program

Environmental Defense

1875 Connecticut Avenue, NW, Suite 600

Washington, DC 20009

(202) 387-3500

before the

House Armed Services Committee

Readiness Subcommittee

concerning

Military Readiness and The Conservation of Protected Species

March 13, 2003

Lands subject to the jurisdiction of the Defense Department frequently harbor many endangered and threatened species. Indeed, some Defense Department lands provide the best remaining habitat for some rare species, because habitats elsewhere have been destroyed by development or other uses. As a result, the Defense Department faces the challenging task of trying to accomplish its training and related missions while achieving compliance with regulatory requirements aimed at conserving these highly imperiled species.

The challenging task described above is often quite daunting. Nevertheless, to its credit, the Defense Department has generally met the challenge and met it well. As one example, just six weeks ago, I attended a symposium sponsored by the U.S. Army Forces Command (FORSCOM) and others. At that symposium, representatives of Camp Lejeune Marine Corps Base, Eglin Air Force Base, Fort Bragg Army Base, Fort Stewart Army Base, Camp Blanding Training Center in Florida, the U.S. Army Environmental Center, and other Defense facilities heralded the Defense Department's success in furthering endangered species conservation on some of the most heavily utilized training bases in the country. Major General David M. Mize, the Commanding General of the Marine Corps Base at Camp Lejeune, was among the speakers. Here is what he said:

Returning to the old myth that military training and conservation are mutually exclusive; this notion has been repeatedly and demonstrably debunked. In the overwhelming majority of cases, with a good plan along with common sense and flexibility, military training and the conservation and recovery of endangered species can very successfully coexist.

Military installations in the southeast are contributing to red-cockaded woodpecker recovery while sustaining our primary mission of national military readiness.

I can say with confidence that the efforts of our natural resource managers and the training community have produced an environment in which endangered species management and military training are no longer considered mutually exclusive, but are compatible.

These, I repeat, are not my words, but the words of the Commanding General of the Marine Corps Base at Camp Lejeune, spoken only six weeks ago. The Marines' experience at Camp Lejeune is not unique. Army representatives at the same symposium emphasized that, as a result of the Army's 1996 Red-Cockaded Woodpecker Guidelines, it has been possible both to lessen restrictions on training activities and to increase the numbers of that species on many bases. That bears repeating: as a result of the Army's 1996 Red-Cockaded Woodpecker Guidelines, it has been possible both to *lessen* training restrictions and to *increase* the numbers of the endangered red-cockaded woodpecker. It

did not take any change to the Endangered Species Act to make that happen. Rather, it happened as a result of the creative implementation of that law by representatives of both the military and the Interior Department who knew that the law gave them the flexibility to design a solution that served both of their aims. In brief, the protections afforded by some of the training restrictions previously in place were less beneficial to the bird than were some of the habitat management activities that the Army was willing to carry out. Through the Guidelines, the two agencies agreed to relax the restrictions and to implement the habitat management measures. A problem that a decade ago seemed intractable is now revealed to be tractable.

I believe that the endangered species problem brought before the Committee today can also be satisfactorily addressed within the framework of existing law. No changes to the Endangered Species Act, to the Sikes Act, or to any other law are needed. What is necessary is a similar determination to pursue the potential within the Endangered Species Act for a creative and flexible solution like Major General Mize and the Army representatives at the symposium described. I will outline for the Committee how I believe that can be done. Before doing so, however, let me state clearly that neither I nor the organization for which I work claims any expertise with respect to military readiness. We are comprised of scientists, economists, environmental lawyers, and other environmental specialists, not of defense specialists. Parenthetically, however, perhaps I should add that our organization's senior vice president, Diana H. Josephson, was principal deputy assistant secretary of the Navy for installations and the environment from 1997 to 2000. From her tenure in that capacity, she reports that the Navy dealt

effectively and responsibly with a wide range of difficult environmental issues in the belief that it was every bit as much the responsibility of the Defense Department to comply with the nation's environmental laws as it was the responsibility of other Americans to do so.

Proposed Section 2017 of Title 10 of the U.S. Code is premised, it is clear, on the concern that designation of critical habitat on military lands has the potential to compromise military readiness. Where that is the case, this concern, I believe, can be satisfactorily addressed under the terms of the existing Endangered Species Act. Section 4(b)(2) of the Endangered Species Act requires the Secretary of the Interior, when considering the designation of critical habitat, to take into consideration economic and all other impacts of such designation. Impacts on military readiness are among the impacts the Secretary can and should consider. The same provision authorizes the Secretary of the Interior to exclude from designation any area "if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat." The only limitation on this latter authority is that it cannot be used in the truly unique case in which failure to designate critical habitat will result in extinction of the species.

Thus, Section 4(b)(2) provides authority under which the Secretary of the Interior can exclude from critical habitat any areas where critical habitat designation would have a detrimental impact on military readiness. The Defense Department may not wish to be dependent upon a favorable determination from the Interior Department's local officials

each time a new critical habitat is considered. It does not have to be. Nor does the importance of a particular area to military readiness have to be second-guessed by the Interior Department biologists who are tasked with making critical habitat decisions. There are regulatory actions that can be taken now that can give the Defense Department substantial assurances on both points.

For example, the Interior Department has not yet promulgated regulations describing how it will carry out its responsibilities under Section 4(b)(2) to consider economic and other impacts and to balance the benefits of designation versus non-designation. It can promulgate such regulations and by doing so could significantly clarify its intentions vis-a-vis Defense Department lands. For example, those regulations could specify that when the Defense Department identifies any particular proposed designation as likely to have significant detrimental impacts on military readiness, and when a natural resources management plan that provides significant conservation benefits for the species is being implemented for that facility, the Interior Department will treat those facts as presumptive evidence that, absent compelling information to the contrary, designation of critical habitat under Section 4(b)(2) is not warranted. Other possible approaches exist as well. My point is not to specify precisely what should be done, but merely to point out what could be done.

In theory, even under this approach, there is a possibility that the Interior Department could go forward with a critical habitat designation that the Defense Department believed would have unacceptable adverse impacts on the military mission.

Were that to happen, however, the existing law already gives the Secretary of Defense the ultimate trump card. Section 7(j) of the Endangered Species Act gives the Secretary of Defense the unilateral authority to demand and receive an exemption from any requirement of the Endangered Species Act. That is an authority that has been in the Endangered Species Act for twenty-five years, but never used by any Secretary of Defense. Why not? Here again, I would like to quote Major General David Mize, Commanding General of Camp Lejeune Marine Corps base:

Sometimes, conflicts arise or a particularly complex project challenges the training and natural resources management communities. But, military thinkers are also problem solvers; rather than listing reasons why something can't be done, we prefer to think of ways to get it done.

I submit to this committee that with that same attitude, it is within the power of the Defense and Interior Departments today to address creatively and satisfactorily the particularly complex challenge that is the subject of this hearing, and to do so without changing the law.

ENVIRONMENTAL DEFENSE, INCORPORATED

Schedule of Federal Awards and Expenditures

Michael J. Bean

For the Fiscal Year ending September 2002 and Two Previous Fiscal Years

Agency	Project Title	Award #	Financial Assistance Awards			
			Fiscal Year 2000	Fiscal Year 2001	Fiscal Year 2002	Total
US Department of Energy						
	Building Capacity for Clean Energy Benefits of Market-Based Environmental Policy	DE-FG03-00SF22121	-	160,795	-	160,795
	Green Vehicle Market Alliance	4000015512	-	-	108,495	108,495
	Subtotal DOE		-	160,795	108,495	269,290
US Environmental Protection Agency						
	El Paso - Ciudad Juarez Project	X-98646201-1	52,000	55,000	-	107,000
	Improving the Economic/Environmental Protection Policy in Ukraine	X-83062501-0	-	-	53,382	53,382
	Advancing transit-oriented infill redevelopment and Equity in transportation and regional land use	X-827803-01-0	-	-	-	-
	Expanding availability and use of voluntary travel incentives - Commuter Choice	X-827425-01-1	150,000	-	-	150,000
	Transportation Efficiency and Equity (EPA Partners Project)	X-824261-01	-	-	-	-
	Building a market based framework to spur capital investments in environmental protection, infrastructure modernization, and technical innovation and transfer in the Russian Federation	X-827298-01-1	125,000	-	-	125,000
	Source reduction of transport packaging through extended product responsibility	OR10055.01	25,000	-	-	25,000
	The Alliance for Environmental Innovation	X-823635-01-5	14,700	-	-	14,700
	Independent review and international presentation of the greenhouse gas emission	X-828858-01-0	-	55,600	-	55,600
	Waste Prevention Public Education Campaign	X-825546-01-1	-	-	-	-
	Subtotal EPA		368,700	110,600	53,382	530,682

For the Fiscal Year ending September 2002 and Two Previous Fiscal Years

Agency Project Title		Award #	Financial Assistance Awards			
US Department of the Interior			Fiscal Year 2000	Fiscal Year 2001	Fiscal Year 2002	Total
Fish and Wildlife Service						
	Black-capped Vireo Habitat Restoration Project	1448-20181-01-G910	-	113,000	-	113,000
	Tobusch Fishhook Cactus Surveys	1448-20181-01-G943	-	10,830	-	10,830
Subtotal DOI			-	123,830	-	123,830
National Aeronautics and Space Administration						
	Community Based Ozone Monitoring	NAGS-12447	-	-	15,000	15,000
National Oceanic and Atmospheric Administration						
	Evaluating Gag Spawning Aggregations and Benthic Habitat in the West Florida Shelf		12,000	-	-	12,000
GRAND TOTAL			378,700	395,225	176,877	950,802

DOCUMENTS SUBMITTED FOR THE RECORD

MARCH 13, 2003

Submitted by Susan H. Davis

**STATEMENT OF EDWIN F. LOWRY
DIRECTOR, CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL
REGARDING THE READINESS AND RANGE PRESEVATION INITIATIVE
PROPOSED BY THE DEPARTMENT OF DEFENSE**

**PREPARED FOR THE
HOUSE COMMITTEE ON ARMED SERVICES, READINESS SUBCOMMITTEE
MARCH 13, 2003**

I am Edwin F. Lowry, Director of the California Department of Toxic Substances Control. My Department's charge is to protect public health and the environment in California from the adverse effects associated with exposure to hazardous wastes. In accomplishing this mission, we regulate hazardous waste management and oversee hazardous site cleanups throughout the State of California.

I appreciate the opportunity to offer my views concerning amendments proposed by the Department of Defense (DoD) to the Resource Conservation and Recovery Act (RCRA) and to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) with regard to the Readiness and Range Preservation Initiative. This statement represents the views of the Department of Toxic Substances Control related to our statutory responsibility to oversee the generation, transportation, treatment, storage, disposal, and cleanup of toxic substances in California.

Before I begin to outline our concerns with the proposed amending language for RCRA and CERCLA, I wish to make three contextual points:

1. I want to assure you of our strong and continuing support for ensuring the readiness of the United States armed forces. Further, we fully appreciate that combat training and

equipment testing is essential to making our armed forces the strongest military force on the globe.

2. California has more experience with environmental issues at military facilities than does any other State. My Department has been and continues to be involved with environmental cleanup at 29 closed or closing installations, more than twice the number as the next most affected State. We work with 107 other open military installations both on matters having to do with hazardous waste management and with site cleanup. Further, California is home to 1,090 formerly used defense sites, at least one quarter of which will require cleanup to restore the land to productive use. It is clear, then, that we bring to the discussion a great deal of practical experience with respect to environmental issues at military properties.

3. I am proud to report to you that my Department has established what I consider to be an exemplary record of collaboration with the DoD and with each of the military services. This productive and cooperative relationship manifests itself most obviously in the many situations in which we have exercised considerable flexibility in our regulatory oversight to accommodate the operational needs of specific installations. I have provided you with a handful of examples.

Having reviewed the proposed Readiness and Range Preservation Initiative language, my concerns focus on five areas, each of which I will expand upon briefly in a moment:

1. As a practical matter, this proposal could allow the military to designate *any* location as an operational range.
2. The proposal, as worded, could exempt non-military entities, such as defense contractors, from having to comply with current environmental regulations.
3. The proposal could limit our ability to adequately regulate or clean up closed training ranges.
4. The proposal could limit our ability to restore formerly used defense sites to productive use.
5. The proposal could allow significant unnecessary contamination of California's valuable groundwater resources.

To repeat a previous comment, while I strongly believe that providing adequate training and testing opportunities is imperative, I believe with equal conviction that doing so does not have to be at the expense of public health and natural resources in California.

National security involves many elements, including protecting our environment for generations to come and restoring the land and water that has been adversely affected by the

release of hazardous substances. In my estimation, this proposal sacrifices the security of California's and the nation's environment.

Let me now further describe the five concerns I noted.

First, the proposed amendments could jeopardize public health and safety by allowing DoD to avoid important environmental safeguards even when there is no immediate effect on military readiness. This is because the military could designate any location as an operational range, whether or not it had any plans to use it for testing or training. While Section 2019(a)(1) of the proposal would modify the RCRA definition of "solid waste" to include "explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof" that are deposited on an "operational range" and are removed for treatment or disposal, it would exempt all wastes that are left on an "operational range," whether or not the range is still actually used for munitions testing or training.

The proposal also would severely curtail California's ability to regulate the practice of using open burning or open detonations to "treat," i.e., destroy explosives and unexploded ordnance. Given the known environmental impacts of this practice, which includes the release of metal fragments and toxic propellant residues, and the yet unknown environmental impacts, we find the proposal to be very troubling.

Second, the proposal is written broadly enough that it could apply anywhere that explosives or other covered materials are handled, even non-military facilities. Section 2019(a)(2) would exclude from the definition of "solid waste" any "explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof" that are used in military training, research and development or testing, or deposited on an operational range." In other words, not only would it apply to military ranges, but it could also exempt defense contractors

from the requirements of RCRA. Defense contractors handle a number of hazardous substances that are constituents of munitions or their delivery systems, such as perchlorate.

Perchlorate contamination from defense contractor facilities is a pervasive problem in groundwater in California and also in the Colorado River. As we see more and more water purveyors forced to shut down their municipal wells, I can say with confidence that perchlorate contamination threatens the drinking water supplies of millions of Californians. Obviously, we can ill-afford to exempt from regulatory oversight defense contractors which might exacerbate this troubling situation.

Third, contrary to representations by DoD, the proposal has not been drafted to limit its effect to operational ranges. The language at the end of Section 2019(a)(2) states: "Nothing in subparagraphs (2)(A), (B), (C), (D), or (E) hereof affects the legal requirements applicable to explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that have been deposited on an operational range once the range ceases to be an operational range." As written, this language would only apply to Section 2019(a)(2) and not to Section 2019(a)(1). Thus, this language would not affect materials left on an operational range, and these materials would still be excluded from the definition of "solid waste" by Section 2019(a)(1), even after the range ceased to be operational. The proposal would also narrow our authority to use CERCLA to ensure cleanups at military bases. Section 2019(b) would exclude from the CERCLA definition of "release" any "explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof" that are deposited and expected to remain on an "operational range." As stated above, the military could designate any location as an "operational range," including an inactive range that had not been used for that purpose for decades and might not ever again be used as a range. Moreover, the proposal would also limit our cleanup authority at closed ranges,

because materials deposited on a range when it was open could still be excluded from the definition of "release" even after it was closed. For obvious reasons associated with potential future land uses, this element of the proposal is completely at odds with the protection of public health and the environment.

Fourth, the circuitous exclusion described above could limit California's authority to ensure cleanups at formerly used defense sites. Currently, there are 1,090 such sites in California, of which at least 200 are likely to be contaminated with explosives and ordnance. These sites will pose obvious risks to public safety if they are not restored to safe conditions.

Fifth, the proposal would exclude from the definition of "solid waste" and the definition of "release" constituents of munitions (including perchlorate) in groundwater below a range as long as they had not migrated off range. Once contaminated groundwater migrates off range it can be far more difficult to contain, posing much higher risks and costs. As I noted previously, California's pervasive perchlorate contamination is causing the shutdown of public drinking water wells and other serious impacts at present. We object to any proposal that would allow a known problem to be uncontrolled until such time as an artificial boundary is crossed.

I have two additional, non-technical concerns. First, the section-by-section analysis prepared by DoD for this proposal claims, as the basis for this initiative, that:

In recent years...novel interpretations and extensions of environmental laws and regulations, along with such factors as population growth and economic development, have significantly restricted the military's access to and use of military lands and test and training ranges, and limited its ability to engage in live-fire testing and training.

As the Director of California's Department of Toxic Substances Control, do not agree with this conclusion. Far from significantly restricting the use of test and training ranges, I am not aware of any instances in California in which any hazardous waste management or cleanup requirement has impeded, limited or infringed on the military's ability to conduct mission-critical operations, including training or testing activities. In fact, nationally, the *Washington Post* recently quoted EPA Administrator Christine Todd Whitman as saying, "I don't believe that there is a training mission anywhere in the country that is being held up or not taking place because of environmental protection regulation."

Contrary to the DoD statement, my Department has consistently worked with DoD and the military services to resolve peripheral issues resulting from range use. For example, open burning of excess propellants and open detonation of munitions left over from live fire exercises may be managed under federally-delegated State hazardous waste management authorization in order to ensure that releases are properly controlled. These kinds of activities have no effect on the conduct of the range firing itself. Nevertheless, we have provided base managers with the necessary flexibility to carry out these activities. We routinely approve variances to allow military facilities to accumulate wastes beyond the normal time limits, and we issue emergency permits to allow the open burning of munitions that cannot safely be removed to the permitted treatment area.

For site cleanups on operating military bases, we have worked with base managers to position monitoring devices and schedule the collection of environmental samples in a manner that will avoid any conflict with ongoing military base operations. These are just a few of the many ways that we have worked cooperatively with the military to resolve issues arising from the implementation of environmental laws. The attached document provides other examples. If

the very premise of DoD's proposal is that California or any State has adversely affected the military's ability to maintain the highest state of readiness, I assert that the premise is flawed and, therefore, the proposal as a whole is unnecessary. In fact, our substantial record of cooperation with the military demonstrates that there is no need for the proposed RCRA and CERCLA amendments.

Finally, assuming the worst about other States' hazardous waste management and cleanup practices, to which I am hard-pressed to give an example, even if there were a situation in which RCRA or CERCLA interfered with essential live-fire testing or training, these statutes still provide extraordinary Presidential authority to suspend their application so that essential training activity could be continued. I am not suggesting use of this authority should become routine, nor that it be used lightly. Like all extraordinary powers, they must be used with respect and circumspection. But the fact remains that the authority is available. Congress has already provided remedies for extraordinary circumstances, and if they are insufficient, a much stronger justification needs to be put forth.

To conclude, I am concerned that DoD's proposal could lead to an open-ended inclusion of environmentally damaging activities under the umbrella of "readiness." As a result, not only might legitimate training and testing activities lead to avoidable releases of contamination, but other marginally-related activities might also cause avoidable releases of hazardous substances. The military, as responsible party, and State and federal regulators would then have to revisit these releases in the future as much larger and more expensive problems requiring cleanup.

I want to close by reiterating my strong desire to assist DoD and the military services in more practical ways. The Department of Toxic Substances Control will continue to work with the military to make effective use of their active range resources, and to improve the likelihood

that those ranges will continue to be sustainable into the indefinite future. We believe we have an obligation to actively assist our armed forces in improving and maintaining the high level of preparedness required by the times. Their well being and readiness are very important to all Californians, and we will work actively with their representatives to find ways to make range operations safe and workable. At the same time, we are obligated to protect California from environmental injury from all sources. I firmly believe that national security includes environmental protection and that there are better approaches to ensure that military security and environmental security complement, rather than counteract one another.

**Coordination between the California Department of Toxic Substances Control
and California Defense Installations**

**Examples of Flexible Regulatory Oversight to Minimize the Effect of
Hazardous Waste Requirements on the Military's Mission**

Hazardous Waste Enforcement and Permitting / RCRA

DTSC is unaware of any instances in California where hazardous waste requirements or enforcement action at a military installation, under either RCRA or the State hazardous waste control laws, have impeded, limited or infringed on the military's ability to conduct mission-critical operations, including training activities.

China Lake

China Lake holds an interim status permit which allows for the treatment of explosive wastes at an open burning/open detonation (OB/OD) area. This permit limits the amount of wastes that can be treated at any one time. DTSC granted an extension to the permit's 90-day storage limit so that the Army can accumulate wastes that could not be treated under the quantity limits of the permit.

The China Lake OB/OD interim permit also limits burn activities to prescribed "burn days" designated by the local air district. Treatment was not allowed because of a severe limit of "burn days" due to wildfires in the Angeles National Forest. Delays in treatment required the explosive wastes to be stored for longer than the permit allowed. On these occasions, DTSC issued storage time extensions to allow China Lake to carry out its OB/OD treatment activities without violating its permit.

DTSC has also issued emergency permits for the immediate treatment of unexploded ordnance (UXO).

Sierra Army Depot

While conducting a range sweep, the Army found pyrotechnic items (e.g., "smokers") that were unsafe to move to the installation's permitted OB/OD area. DTSC issued an emergency permit to allow the one-time open burning of these items outside the permitted OB/OD area. This allowed the Army to continue its range sweep operations and to not endanger civilian and military personnel attempting to move the unstable items.

Fort Hunter Liggett

Fort Hunter Liggett does not have a permitted or interim status OB/OD area. DTSC issued an emergency permit to allow the detonation in place of unstable ordnance found on the installation. This allowed the UXO to be treated without transportation off site.

Edwards AFB

DTSC issued an emergency permit to allow the one-time, open burning of 340 pounds of solid rocket propellant, propellant ingredients and propellant-contaminated rocket disposal equipment. Edwards has a permitted OB/OD area. However, these items were unstable and transporting them to the permitted area was unsafe.

Site Cleanup/CERCLA

Camp Pendleton

DTSC expedited its review of the time critical removal action documents that the Marine Corp prepared for the removal of PCB-contaminated soils from the site where the Helicopter Out Landing Field is constructed. The field is located within the habitat of an endangered species, the Arroyo Southwestern Toad. DTSC reallocated staff resources to approve the removal action quickly so that the Marines can take advantage of a construction window during the non-mating season for the Arroyo Southwestern Toad.

McClellan AFB

During the time when McClellan was an active AFB and at the request of the McClellan base commanders, DTSC routinely re-located soil sampling locations at buildings where aircraft repair or maintenance were performed to accommodate the Air Force as they carried out their mission.

While the Defense Reutilization and Marketing Office (DRMO) continued its operations, Air Force contractors collected (with DTSC oversight) over 5,000 samples and completed the selected CERCLA remedial action (i.e., placement of a cap) at Operable Unit B1 (DRMO's paved area).

At another McClellan location, the base plating shop, the CERCLA cleanup investigation was conducted so as to avoid interfering with base operations.

Travis AFB

DTSC implemented a cleanup removal action to install two horizontal groundwater extraction wells under the airfield apron, without affecting base flight operations. DTSC approved the horizontal well construction instead of less costly vertical wells in order to accommodate base operations.

Immediately following September 11, 2001, Travis AFB and other active bases went on high alert. State environmental staff and Air Force contractors involved with base CERCLA cleanup activities and hazardous substances treatment systems could not come onto the base to operate the systems or carry out routine cleanup work. Access was similarly restricted at all other active military installations. Because of the need for the military to carry out its defense mission, the State accepted this as a necessary precaution. No use of CERCLA, RCRA or other state law authority to gain access was contemplated, nor would the state consider such action where national security is an issue.

Vandenberg Air Force Base

Site 9 (IRP site at Space Launch Complex 4 West)

In November 2002, prior to the final approval of the CERCLA Interim Remedial Action Work Plan in December 2002, DTSC gave the Air Force its “conditional approval” to construct a concrete containment pad for the groundwater treatment system. The conditional approval allowed the construction before the winter rainy season and before a December-scheduled launch operation. Construction activities cease occasionally to accommodate scheduled space missile launch activities and unscheduled-launch delays.

Site 8 (IRP site at Space Launch Complex 4 East)

In October 2002, DTSC conducted additional investigation of the TCE contamination source area near the launch pad. Originally, DTSC selected 12 soil gas locations for further investigation and obtained clearance from utility interference. Because of launch operation constraints, the launch operations commander only approved five of the original 12 soil gas locations. To accommodate this request, DTSC is currently evaluating the placement of these fewer borings to best characterize the TCE plume.

Site 25 Cluster (a cluster of IRP sites at Space Launch Complex 2 and Space Launch Complex 1)

With concurrence from DTSC, the Air Force conducts investigation work only during the winter season for the evaluation of a TCE plume that extends from this site to an adjacent sand dune beach. The Least Tern, a protected species, nests in this beach area. The shortened winter work phase accommodates the Least Tern nesting season, which is March 1 through September 30 of each year.

Naval Station San Diego

Site 6, Time Critical Removal Action (TCRA)

In April 1996, the Navy proposed a CERCLA time critical removal action to reduce the risk at the site (from mostly polycyclic aromatic hydrocarbon compounds [PAHs], which are very persistent environmental contaminants) and to prepare the site for a scheduled military construction project. This project included the building of structures for the staging of military equipment, vehicles and supplies.

The DTSC/Navy Team shortened the review periods for primary Installation Restoration Program (IRP) documents (e.g., Remedial Action Plans (RAP), Removal Action Work plans, Removal Site Evaluations, and Preliminary Endangerment Assessments). As part of these shortened review cycles, DTSC works with the Navy to conduct “Over the Shoulder Reviews” to identify potential problem areas in these documents. The process involves a presentation by the Navy’s consultant of the primary document’s content, followed by a group discussion. In these discussions DTSC identifies possible major concerns and discusses these issues with the Navy staff, its consultants, and other regulatory agencies present. During such reviews, regulatory concurrence is often made on the same day. This collaborative process results in immediate implementation of the cleanup work plan. The Navy benefits in these fast track projects by avoiding the loss of budget and limiting the operational constraints because of extended implementation times.

DTSC expedited its approval of the CERCLA Time Critical Removal Action Plan in June 1996, two months after submittal. This time critical removal action concluded in record time and the fieldwork completed at the end of July 1996. This provided ample lead-time for the Navy's construction scheduled toward the end of the year. The Navy removed and transported offsite approximately 5,090 tons of PAH-impacted soil for treatment and recycling. This removal action reduced the excess cancer risk associated with the site from 3×10^{-3} to 1.2×10^{-6} .

Site 13: Former Sand Blasting Area

This site is located at the base cogeneration plant, which operates large gas turbines. DTSC coordinated the excavation and cleaning of the former sand/grit blasting materials below-ground vault with the energy company to coincide with gas turbine maintenance and off-line schedules. These types of coordination activities eliminate disruption of mission critical equipment operations and disruption of base electricity service.

Site 1: Former Ship Repair Basins Location

The CERCLA removal action activities at this site are scheduled to limit military and civilian personnel so that the most disruptive activities (e.g., excavation and drilling) occur when ships are not present at the piers that front the site.

Naval Air Depot, North Island

IR Site 5, Unit 2 Soil Removal

The CERCLA time critical removal action began on a Friday evening and continued through the following weekend to avoid interfering with flight operations and golf course activities. The Navy, in consultation with DTSC, selected a chemical oxidation groundwater treatment system for the site because the site is on the flight path of the runway and the use of large equipment would be impracticable at the site. For example, the installation of a soil vapor extraction treatment system requires the construction of large high-profile tanks and associated piping, while a chemical oxidation system requires the construction of low-profile and smaller pieces of equipment.

Site 9 Feasibility Study

DTSC considered the Navy's concerns for base flight paths and all mission activities when it evaluated the selected remedial actions identified in the feasibility study. In each remedial action evaluation, DTSC fulfilled the Navy's request to also consider the effects of the selected remedy with the loading and unloading of weapons at Bravo Pier (a mission-critical activity at North Island). To meet these mission-critical activities, Site 9 is routinely cleared of civilian personnel and equipment during Bravo Pier weapons loading and unloading operations. A proposed evapotranspiration plot (i.e., evaporation and transpiration sand beds) for disposing of treated wastewater at Site 9 is under reconsideration because of concerns by the Navy that the evapotranspiration plot will attract birds and this will interfere with established aircraft flight paths.

Tank Farm

While constructing new fuel tanks, the Navy destroyed several groundwater extraction wells. These wells are part of a system of wells used to address the plume of a fuel (a

combination of JP5 and aviation gas) that underlies the tank farm site. The State continues to use the existing wells to monitor the plume and it proposes no new well construction to replace the destroyed wells. This allows the Navy to maintain its fueling operations.

IR Site 1, Outfalls 9 through 15

The Navy implemented an expedited remedial action under CERCLA to meet its need for the construction of a new nuclear carrier pier. As part of the expedited action, DTSC allowed the Navy to remove materials dredged from the shipping channel and to dispose of these dredge materials into the confined disposal facility that underlies the site. DTSC assists the Navy in finalizing its cleanup of the site by allowing the inclusion of these interim removal activities as part of the final remedy selected for the site.

Pier Construction Project

In 2002, several groundwater-monitoring wells were destroyed during the construction of a new pier. To accommodate the operations at the new pier, DTSC approved the drilling and construction of new wells at different locations to replace the destroyed wells.

Testimony of Peter Tyack to the Military Readiness Subcommittee of the House Armed Services Committee

Thursday, 13 March 2003

My name is Peter L. Tyack. I am a Senior Scientist and Walter A. and Hope Noyes Smith Chair in the Biology Department of the Woods Hole Oceanographic Institution in Woods Hole Massachusetts. My main research interest concerns the social behavior of marine mammals and how they use sound to communicate and explore their environment. I have spent much of the last 25 years following these animals at sea, using underwater microphones to record their sounds while I study their behavior.

One of the first things I noticed when I started to listen to animal sounds under the sea is how often the background noise has manmade sounds, the drone of ships, the buzz of outboards, pulses from airguns used by the oil industry, pile driving and explosions from construction, pings from sonars. This immediately raises the question of whether these manmade sounds may disturb marine mammals to the point of disrupting important activities. Starting in the early 1970s, scientists have been the first to raise the alarm about this problem, and many of us have spent considerable time diverted from our basic scientific interests to help with this conservation issue.

I was a member of two Committees of the National Academy of Sciences reviewing issues concerning low frequency sound and marine mammals. Both of these committees listed research needs critical for this issue, but also emphasized how regulation under the MMPA hinders critically needed conservation biology research: "research on marine mammals is heavily regulated and often delayed – even more than research on human subjects – which makes the prospects for timely conduct of these much needed studies poor." (p 25; Low-frequency Sound and Marine Mammals 1994) Not only does the research community face the cost and delays of the regulation, but a recent lawsuit attacking the permitting procedures has shut down research designed to protect these animals from threats that are unregulated.

My main points for this testimony are as follows:

1. The proposed changes in the definition of harassment do not make sense from a biological perspective and do not fully clarify the problems with the earlier definition. I recommend wording closer to that recommended by the National Academy of Sciences 2000 report on Marine Mammals and Low Frequency Sound.
2. The current procedures for regulating harassment are dysfunctional. They hinder research urgently needed to protect marine mammals, while being ineffective in targeting the situations where disruption of behavior may actually pose a risk to individuals or populations.

3. It would be much better to fix the problems with the regulatory process for harassment across the board than to create different standards for different special interests. I reiterate recommendations of the National Academy of Sciences 1994 report on Low Frequency Sound and Marine Mammals for a new procedure to regulate "harassment takes" under the MMPA.

The basic principles underlying my testimony are that any regulation of harassment should ideally apply evenly to all ocean-going activities, and that harassment should be defined in terms of biologically significant changes in behavior, with a standard of negligible effect, below which a change in behavior is not considered harassment.

1. Definition of harassment

The current definition of level B harassment in the MMPA is:

"has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

The 1994 National Academy Report on Low Frequency Sound and Marine Mammals succinctly reviewed the problem of how harassment has been interpreted under the MMPA:

Logically, the term harassment would refer to a human action that causes an adverse effect on the well-being of an individual animal or (potentially) a population of animals. However, "the term 'harass' has been interpreted through practice to include any action that results in an observable change in the behavior of a marine mammal" (Swartz and Hofman, 1991). (p. 27)

The 1994 National Academy Report goes on to note that many minor and short-term behavioral responses of marine mammals to manmade stimuli are simply part of the normal behavioral repertoire. There is clearly a need for some standard of negligible effect, below which a change in behavior is not considered harassment.

The proposed change in the definition of level B harassment before the Armed Services Committee is:

"disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered."

As a biologist who has studied the behavior of marine mammals for more than 25 years, I find this wording confusing, and I do not see how it addresses the problem identified by the National Academy committee. The last phrase added to the definition does add a criterion of significant alteration. However the point of the Academy report was *biological* significance, a disruption that could have an adverse effect. The wording in the new definition could just as easily be interpreted to mean a statistically significant observation of a change in behavior. As our techniques to study marine mammals have

grown in sophistication and sensitivity, it is now possible to demonstrate statistically significant alerting or orienting responses that in my opinion fall well below the negligible effect standard.

I find the addition of the word “abandoned” particularly confusing in the new definition. It certainly makes sense to add a criterion for abandonment of critical habitat, but what does this wording mean for behavior patterns? A sperm whale or elephant seal can dive for an hour or more, but any marine mammal that abandons surfacing behavior cannot breathe. If it abandons surfacing for more than a few hours, it is certainly dead. If a sperm whale group is sheltering a young calf from a killer whale attack, even a momentary abandonment of the behavior could be lethal. Calves may be able to survive for days or weeks if their mother abandons nursing, and many whales could survive for years without feeding, but what is the time period implied by “abandon.” My understanding of “abandon” is that it means a permanent change. By this definition, the “abandonment” wording turns level B harassment into a lethal take. Far from distinguishing negligible from potentially significant effects, it muddies the waters further.

Another problem with the use of the term “abandon” is that I take it to mean a 100% cessation of an activity. Yet since the definition of harassment also applies to stocks, this definition is not conservative enough for actions that may affect a large portion of a stock. For example, suppose an activity caused a 50% reduction in foraging rates in a majority of the population, or caused animals to be 50% as effective in finding a mate for breeding. Such reductions would not “alter” the form of the behavior, nor would they meet an abandonment criterion, but few populations could sustain such changes on a long term basis.

I would like to take this opportunity to reiterate the suggestion of the National Academy of Sciences second report (2000) on Marine Mammals and Low Frequency Sound on the definition of level B harassment:

“NMFS should promulgate uniform regulations based on their potential for a biologically significant impact on marine mammals. Thus, level B harassment should be redefined as follows:

Level B – has the potential to disturb a marine mammal or marine mammal stock in the wild by causing meaningful disruption of biologically significant activities, including, but not limited to, migration, breeding, care of young, predator avoidance or defense, and feeding.

The Committee suggests limiting the definition to functional categories of activity likely to influence survival or reproduction. Thus, the term “sheltering” that is included in the existing definition is both too vague and unmeasurable to be considered with these other functional categories.” (p 69)

This definition was written by scientists and may require some rewording to fit legal and legislative requirements. But if the definition of harassment is to be changed, it should be done so in a way that makes biological sense and that corrects the need for a negligible effect standard. I do not think that the proposed changes in the definition succeed in this task.

I believe, however, that the problem has less to do with the definition of harassment than with the process currently used to regulate harassment under the MMPA.

2. Procedures for regulating harassment

My read of the proposed changes in wording of the sections of the MMPA for taking and importing marine mammals is that their primary effect is to remove the conditions of small numbers and specified geographical region for the incidental take provisions as applied to military readiness. The first two reports of the National Academy of Sciences on marine mammals and low frequency sound specifically suggested removing the requirements for small numbers of takes, while retaining a criterion of negligible impact, but they suggest that this change be applied to all activities:

Reword the incidental take authorization to delete references to "small" numbers of marine mammals, provided the effects are negligible. (p. 39)

Low frequency Sound and Marine Mammals (1994)

In addition to making the suggested change in the level B harassment definition, it would be desirable to remove the phrase "of small number" from MMPA section 1371(a)(5)(D)(i). If such a change is not made, it is conceivable under the current MMPA language there would be two tests for determining takes by harassment, small numbers first, and if that test were met, negligible impact from that take of small numbers. The suggested change would prevent the denial of research permits that might insignificantly harass large numbers of animals and would leave the "negligible impact" test intact. (p. 71)

Marine Mammals and Low-frequency Sound (2000)

My understanding of the judge's ruling in the legal challenge to operation of the SURTASS LFA sonar, NRDC vs Evans, is that the judge ruled against the interpretation followed by NMFS that "small" can be interpreted in terms of population size, and exactly following the fears of the National Academy panel, ruled that the current MMPA language does require both negligible impact and small numbers, where the meaning of the word small could not be interpreted in terms of size and status of populations.

For naval operations, the restriction in the MMPA of incidental take permits to specified geographical areas conflicts with the NEPA requirement to consider all possible uses of a system. The U.S. Navy has a global mission and cannot restrict its potential activities to specified geographical areas smaller than the world's oceans. In 1989, who would have predicted the areas that became most critical to the Navy in the early 1990's? Therefore, if "specified geographical region" is taken to mean areas small enough to involve the same species and oceanographic conditions, the requirements of the incidental take permits are incompatible with the way the Navy operates. Oceanographic research, much of which uses sound as a tool to explore the ocean, also has a global scope, and may be difficult to authorize under the current regulatory procedures.

While discussing current regulatory procedures dealing with harassment, I must reiterate that the current regulatory focus on research activities is interfering with research that is needed to obtain critical information to evaluate risk factors for noise exposure in the sea.

The impacts of naval and other noises cannot effectively be regulated until scientific research discovers what exposures are harmful and which are harmless. As the 1994 National Academy report on Low-frequency Sound and Marine Mammals put it:

Scientists who propose to conduct research directed toward marine mammals are aware of the permitting requirements of the MMPA and of the Endangered Species Act (ESA) and the associated regulations. Most of their research can be conducted under the scientific permitting process. They routinely apply for and obtain such scientific research permits. However, the lengthy and unpredictable duration of this process can create serious difficulties for research.... In addition to permit delays, certain types of research that are considered "invasive" or "controversial" either are not allowed under the current permitting process or may require an Environmental Assessment or even an Environmental Impact Statement under the National Environmental Protection Act (NEPA). Such a regulatory burden actively discourages researchers from pursuing those lines of study. (p 29)

The committee strongly agrees with the objective of marine mammal conservation, but it believes that the present emphasis on regulation of research is unnecessarily restrictive. Not only is research hampered, but the process of training and employing scientists with suitable skills is impeded when research projects cannot go forward. Experienced researchers are the ultimate source for expanding our knowledge of marine mammals. A policy that interferes with the development of this resource appears to be self-defeating. (p 30)

Things were bad in 1994, but they have recently become much worse. The delays for permitting have become much longer. In addition, in a recent court case regarding the permitting process, the judge ruled that all acoustic research on marine mammals, i.e., all of the research that can help resolve the marine mammal issues raised by the National Academy reports, is controversial, and thus requires an Environmental Assessment or Environmental Impact Statement. Unless Congress changes the regulatory process or provides funds to hire a significant expansion of the permitting office, the permitting process will not only discourage research, but may make it almost impossible to conduct some research that is urgently needed for conservation biology and that has negligible effects.

The permitting process was designed to allow an exemption for scientific research from the MMPA prohibition on taking marine mammals. It is ironic that the permitting process has endangered research designed to find out about impacts from other much more extensive activities that are unregulated. A scientist playing back the sounds of a tanker to monitor responses of whales requires a permit to cover any animals whose behavior has changed, while the thousands of tankers entering US ports and ignoring these impacts are unregulated. In fact, the prosecutor for the southwest region of NMFS has gone on record with the Marine Mammal Commission stating that he will not prosecute harassment cases because the process and definition are unworkable. The way in which the permitting process highlights requests by scientists for harassment "takes" also makes research a lightning rod for concern about impacts, because it is so visible compared to all the activities for which harassment is unreported and unregulated.

Another problem with the language of the MMPA involves the use of the word "take" to cover the potential for an activity to cause slight and temporary changes in behavior. My own permit for scientific research on marine mammals covers experiments in which my

research group monitors reactions of tagged marine mammals to short exposures of sound under controlled conditions. Since we do not know what exposures lead to changes in behavior for many species and sound types, I request permission for these playbacks to incidentally “take” animals that might be within range of the signals. In this age of the internet, it is quite easy for people all over the world to hear of a permit allowing thousands of “takes” of marine mammals. It is difficult for people from many countries to find it credible that the U.S. would regulate the potential for any change in behavior, so it can easily appear that this permit allows “taking” in the normal English sense, which sounds quite drastic. I strongly urge the language be changed to use “take” for lethal take, “injury” for level A harassment, and “disrupt” or “disruption” for level B harassment.

There are many studies demonstrating that marine mammals respond to ships, dredging, icebreaking and construction, and sound sources such as pingers, air guns, and sonars. Most of these sound sources are currently unregulated simply because NMFS chooses not to enforce the prohibition against taking marine mammals. I doubt that many of these activities could find a regulatory procedure under the current wording of the Marine Mammal Protection Act that would allow activities with negligible impact while controlling those that might have an adverse impact. As has been pointed out by each of the three National Academy reports on this topic, the dominant source of manmade noise in the ocean is the propulsion sounds from ships. Yet this has not been regulated by NMFS. As the National Academy 2000 report *Marine Mammals and Low-frequency Sound* put it:

If the current interpretation of the law for level B harassment (detectable changes in behavior) were applied to shipping as strenuously as it is applied to scientific and naval activities, the result would be crippling regulation of nearly every motorized vessel operating in U.S. waters. (p. 69)

One response to this conundrum is for each activity to seek special exemptions if their activities become targets of regulation. However, the National Academy 1994 report *Low-Frequency Sound and Marine Mammals* discouraged that approach:

“However, it seems unreasonable that an exemption from the “take” prohibitions of the MMPA should be available for some human activities, including some that kill marine mammals, without being available for other human activities whose goal may include the acquisition of information of potential value for the conservation of marine mammals.” (p. 38)

3. Recommendation for a new procedure to regulate harassment “takes” under the MMPA

The previous section discussed how the procedures for regulating harassment under the MMPA are not working. The Act as currently written provides a special procedure under section 118 for commercial fisheries that focuses on incidental mortality and serious injury, effectively exempting commercial fisheries from the prohibition on harassment other than serious injury. The current DOD proposals suggest the addition of a new condition for military readiness. The same regulatory problems faced by DOD also are likely to lead other sources of noise to request special conditions when an honest

evaluation of the numbers of potential takes by harassment indicates that there is no way to allow the full scale of operations under the requirements of small takes and specified geographical regions. During the period when no one thought to regulate naval activities under the MMPA, the problems with the regulatory system were less obvious to any group other than commercial fisheries and researchers. I fear that the precedent of setting special regulations for both fisheries and military readiness may lead to a cascade where every group that comes under harassment regulation in the MMPA seeks special exemptions from a regulatory process that is demonstrably not working. For example, there is increasing controversy about how to regulate potential harassment takes of seismic surveys conducted by the oil industry in the Gulf of Mexico.

I believe that it would be much better if Congress could correct the deficiencies in the MMPA so that the same regulatory process for harassment could be applied to all seafaring activities in a way that targets situations of potential adverse effects while minimizing the regulatory burden for activities with negligible effect. Please allow me to sketch an outline of such an approach based upon suggestions from the National Academy 1994 report on Low-frequency Sound and Marine Mammals and the 2000 report on Marine Mammals and Low-frequency Sound. The 2000 report reviews a suggestion made in 1994 regarding amendments to the MMPA that were adopted in 1994:

The NRC (1994) suggested that the regulations governing the taking of marine mammals by fishing activities should be broadened to include other user groups that might take marine mammals. This concept was incorporated into the 1994 MMPA amendments. The MMPA now requires calculation for each species of a conservative number of animals that might be taken by humans from marine mammal stocks, while "allowing that stock to reach or maintain optimum sustainable population," called the *potential biological removal* (PBR) level (MMPA, sec 1362[t]; see Appendix C). NMFS is required to tally all human-induced mortality for its stock assessments (MMPA Sec. 1386[a]) and uses this number to estimate PBR. (p. 66)

Here is the concept for PBR advocated by the 1994 National Academy Report on Low-frequency sound and marine mammals:

The proposed regime is designed to redirect regulation to focus on human activities with the largest impact on marine mammal populations, scaling the extent of regulation to the risk the activity poses to populations. The proposed regime was initially developed primarily for commercial fishing, but it was designed to allow the inclusion of other "user groups" for PBR. If such a mechanism is adopted in the revised legislation, this committee recommends that Congress and NMFS consider it for regulating most "takes" of marine mammals by research as well. Since the objective of the law is to protect marine mammals, it is difficult to understand applying different, and less stringent, rules to activities that kill marine mammals than to activities that are known to benefit them or to have negligible effects on them. For any population in which harassment is considered to be a serious risk to populations, taking by harassment may be included in these regulations. Where taking by fishing is considered to have negligible impact compared to other activities, regulatory attention should focus on these more significant risks. (p. 35)

Please allow me to flesh out some suggestions of how this might work. The incidental take provisions of the MMPA for commercial fisheries require determination of whether

the incidental mortality and serious injury from commercial fisheries will or will not have a negligible impact on marine mammal stocks. Fisheries are categorized as to whether they have frequent, occasional, or remote likelihood of causing mortality or serious injury, and each fishery receives an authorization for incidental takes subject to conditions. As long as a fisher registers with this authorization process, complies with the conditions, and reports any takes, s/he is exempt from the prohibition against taking.

I suggest that different user groups that produce sound in the sea or otherwise cause takes (e.g. vessel collision) could either voluntarily form together or be designated by NMFS. Either they or NMFS would be required to prepare an Environmental Impact Statement, an Environmental Assessment, or some simpler form depending upon the normal NEPA criteria, including whether takes, including harassment takes, were anticipated to be frequent, occasional, or occur with a remote likelihood. After this stage, each vessel or member of the user group could apply for the same kind of incidental take authorization as commercial fisheries now operate under, with similar conditions, depending upon the expected level of impact. Before embarking to sea, each user could be required to provide a simple notification of where they are going and what they plan to do. They would be required to report any takes, including level A or B harassment takes, with strict reporting requirements. For activities that might cause harassment takes beyond the range of detection of the vessel, a monitoring program could be established to study animals at different ranges from the activity in order to better estimate the number of harassment takes.

My understanding of the PBR process is that it only counts lethal takes, not injury. For the purposes of incorporating harassment takes into this regime, NMFS could establish an arbitrary accounting of harassment takes, perhaps graded by severity, duration, and geographical extent. However, the significance to the population of a lethal take is the effect this take has on the demography of the population, the ability of the population to grow or remain a healthy size. I strongly encourage Congress to adopt wording requesting that NMFS attempt to account for harassment takes conservatively in terms of just the same demographic effects as lethal takes. Different kinds of harassment e.g. injury, prolonged disruption of critical activities, that have different effects should have different weights compared to lethal takes. For example, ten injuries might roughly be equivalent to a lethal take, while 1000 disruptions lasting a small fraction of a lifetime might have a similar demographic effect. This is currently a challenging scientific problem, but the correct wording would stimulate the appropriate science, while focusing attention on the critical issue of keeping marine mammal populations healthy. If NMFS scaled the number of harassment takes equivalent in demographic terms to a lethal take, then this might also correct the problem of how to deal with large numbers of insignificant takes that was identified by the National Academy Committee. Perhaps if the number of harassment takes were tallied as "lethal equivalents," the limitation of small number of incidental takes could be retained, while not precluding an incidental harassment authorization for activities that cause a number of insignificant takes that is larger than "small."

This kind of program would allow NMFS to identify situations where

- A stock was at risk from a particularly high number of takes.
- An area or activity caused a high number of takes for a variety of species.
- There were particular hot spots of takes.
- The cumulative takes pose a risk to the population

Where the sum of takes, lethal, injury, or harassment, pose a risk to a population, this regime should require a take reduction team to reduce the problem. This kind of regulatory regime would reduce the burden on activities that pose little risk, while focusing attention on species, areas, or activities that pose the greatest risk to the most endangered populations.

Some may be concerned that the regulatory process I sketch out would lead to reduced protection. It would certainly make the regulatory process less impossible and more predictable for some activities, but I agree with the National Academy (2000) report on Marine Mammals and Low-frequency Noise that such a change would, if done correctly, increase protection from the status quo:

The Committee also suggests that activities that are currently unregulated, but which are major sources of sound in the ocean (e.g. commercial shipping) be brought into the regulatory framework of the MMPA. Such a change should increase protection of marine mammals by providing a comprehensive regulatory regime for acoustic impacts on marine mammals, eliminating what amounts to an exemption on regulation of commercial sound producers and the current and historic focus on marine mammal science, oceanography and Navy activities. (p. 72)

This change would be all the more effective if it included all sources of harassment into an integrated workable regulatory structure. I strongly urge Congress to respond to the problems highlighted by DOD by trying to fix the underlying flaws in the regulatory procedures of the MMPA before granting a special exemption that does nothing for marine mammal conservation and leaves many other producers of sound in the sea with no way to meet the regulatory requirements. If done correctly, the regulations might not only be able to add other activities to the regulatory approach used for fisheries to focus attention on those situations that pose the most risk to marine mammal populations, but might also be able to add a common mechanism for dealing with harassment takes in fisheries as well.

Thank you so much for your attention.

Peter L. Tyack

Testimony
on
Environmental Legislative Proposals

Readiness Subcommittee
Committee on Armed Services
U. S. House of Representatives

Thursday, 13 March 2003

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March 23, 2003

The Honorable Joel Hefley, Chairman
 Readiness Subcommittee
 Committee on Armed Services
 U. S. House of Representatives
 2120 Rayburn House Office Building
 Washington, D.C. 20515

Dear Representative Hefley:

I am sorry that I was unable to accept your invitation to testify in person before the Readiness Subcommittee of the House Armed Services Committee on Thursday, March 13, 2003. I am nonetheless pleased to submit the following written statement for inclusion in the record of the Readiness Subcommittee Hearing on Environmental Legislative Proposals.

I very much appreciate being asked to testify before the Committee. Please feel free to contact me if you have any questions or need any further information.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Peter Worcester".

Peter Worcester
 Research Oceanographer

Enclosure

cc: G. D'Spain (SIO)
 C. Kennel (SIO)
 R. Knox (SIO)
 J. Orcutt (SIO)
 K. Ritzman (SIO)

The Readiness and Range Preservation Initiative included in the Defense Authorization Act for Fiscal Year 2004 proposes modifications to the Marine Mammal Protection Act (MMPA) of 1972, as amended, at least in part because of concerns about the impact of the MMPA on the use of sound in the sea by the U. S. Navy.

Last year I testified before the Subcommittee on Fisheries Conservation, Wildlife, and Oceans of the House Committee on Resources on H. R. 4781, the Marine Mammal Protection Act Amendments of 2002. In my testimony I discussed the impact of the MMPA on oceanographic research using acoustic methods and suggested amendments to the act intended to facilitate the constructive use of sound in the sea, while providing all appropriate protections for marine mammals. I was asked to testify before the Committee on Resources because my career has been devoted to the development and application of acoustic remote sensing techniques to study large-scale ocean structure and circulation.

Any discussion of the use of sound in the sea must start from one basic fact:

The ocean is largely transparent to sound, but opaque to light and radio waves.

Light travels only a few hundred meters into the ocean before it is absorbed. Sound can travel long distances and with great speed underwater. Marine mammals — whales, dolphins, seals — therefore rely on sound to sense their surroundings, to communicate, and to navigate. Similarly, oceanographers, fishermen, and submariners — in short, all who work in the ocean — rely on sound to sense their surroundings, to communicate, and to navigate. Fishermen, for example, use acoustic fish finders to locate schools of fish. Oceanographers use sound in the sea for a wide variety of purposes, including assessing fish stocks, measuring ocean bathymetry, communicating underwater, transmitting data from subsea instruments to the surface, navigating underwater, profiling ocean currents, and measuring large-scale ocean temperature variability. The U.S. Navy uses sound for many of these same purposes, as well as to detect and track submarines and to locate mines.

Sound in the sea is *not* just noise. It is used for a wide variety of valuable and important purposes.

With all of that said, what is the problem? The problem is that the current regulatory procedures under the MMPA are complex and fraught with delays, costly in both time and money, and uncertain in their outcome. Further, the current regulatory procedures do not adequately differentiate between activities that cause minor changes in marine mammal behavior having no adverse impact and activities that cause significant disruption of behaviors critical to survival and reproduction. The current regulatory structure makes obtaining the necessary authorizations for using sound in the sea so arduous that it is having a chilling effect on a wide variety of important and valuable uses of sound in the sea.

A project in which I am involved, called the North Pacific Acoustic Laboratory, provides an example of the current regulatory process. As one component of this project we sought the authorizations needed to operate a low-frequency sound source off the north shore of Kauai. The source had previously been operated for two years as part of the Acoustic Thermometry of

Ocean Climate (ATOC) project, which included an extensive marine mammal research program to determine the effects, if any, on marine mammals. The short summary of that research is that subtle effects were detected. Large whales could clearly hear the source, but none of the marine mammal experts involved with the program felt that the observed effects were biologically significant.

We started the process of seeking the required authorizations in the spring of 1999. We finally completed the process and were able to resume transmissions in late January of 2002 (Fig. 1). It took nearly three years and cost in excess of half a million dollars to get the required permits!

I believe — hope? — that this is an extreme example. Nonetheless, I believe that it is clear that the regulatory burden in this case bore little relation to the potential environmental impacts of the project.

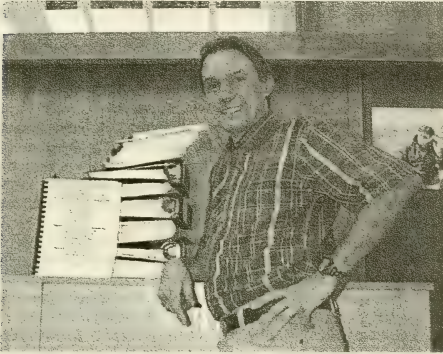


Figure 1. Peter Worcester, North Pacific Acoustic Laboratory (NPAL) Principal Investigator, with the environmental documentation prepared in the course of obtaining the authorizations needed to operate a low-frequency sound source off the north shore of Kauai to do a second phase of research on the feasibility and value of large-scale acoustic thermometry. Obtaining the required authorizations took nearly three years and cost in excess of half a million dollars.

The impact of the existing regulatory structure on marine research in particular has been discussed in a number of contexts, including three recent National Research Council reports:

National Research Council (NRC). 1994. *Low-Frequency Sound and Marine Mammals: Current Knowledge and Research Needs*. National Academy Press, Washington, D.C.

National Research Council (NRC). 2000. *Marine Mammals and Low-Frequency Sound: Progress Since 1994*. National Academy Press, Washington, D.C.

National Research Council (NRC). 2003. *Ocean Noise and Marine Mammals*. National Academy Press, Washington, D.C.

Although I am not in agreement with all of the conclusions in these reports, they provide an important service in considering how the MMPA could be modified “for facilitating valuable research while maintaining all necessary protection for marine mammals” (NRC, 1994). The suggestions made in these reports also provide useful guidance on how the MMPA could be modified to facilitate other valuable uses of sound in the sea, while maintaining all necessary protection for marine mammals. Perhaps the most significant change recommended in these reports is that the definition of Level B Harassment be modified.

Definition of Level B Harassment

The 1994 amendments to the MMPA included a definition of harassment as “any act of pursuit, torment, or annoyance which:

Level A—has the potential to injure a marine mammal or marine mammal stock in the wild; or

Level B—has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.”

This definition of harassment in the MMPA is unfortunately somewhat ambiguous and has been interpreted at times to mean that any *detectable* change in behavior constitutes harassment. NRC (1994) notes that as “researchers develop more sophisticated methods for measuring the behavior and physiology of marine mammals in the field (e.g., via telemetry), it is likely that detectable reactions, however minor and brief, will be documented at lower and lower received levels of human-made sound.” NRC (2000) concludes that it “does not make sense to regulate minor changes in behavior having no adverse impact; rather, regulations must focus on significant disruption of behaviors critical to survival and reproduction.” NRC (2000) suggests that Level B harassment be redefined as follows:

“Level B—has the potential to disturb a marine mammal or marine mammal stock in the wild by causing meaningful disruption of biologically significant activities, including, but not limited to, migration, breeding, care of young, predator avoidance or defense, and feeding.”

NRC (2003) expands on, rather than replaces, the recommendations contained in the previous reports. All three NRC committees are therefore in agreement that the definition of Level B harassment should be modified to focus on the *biologically significant* disruption of behaviors critical to survival and reproduction, i.e., on *adverse* impacts rather than simply on any *detectable* change in behavior.

These recommendations apply to *all* activities falling within the purview of the MMPA, including both oceanographic research and activities important to military readiness.

Scientific Research on Marine Mammals and Sound

All three NRC reports also make it clear that the current understanding of the effects of underwater sound on marine mammals needs to be improved. The Office of Naval Research currently funds a substantial research program on underwater sound and marine mammals. Nonetheless, I believe that in parallel with modifying the definition of Level B harassment to focus on *adverse* impacts, an enhanced research program on the effects of underwater sound on marine mammals is needed. It is important that this program be independent and peer-reviewed. It should be broadly based, with participation from funding agencies other than the Office of Naval Research.

Two other changes to the MMPA would facilitate this and other valuable marine research:

(i) Scientific Research Permits

The MMPA currently provides a relatively streamlined permit procedure for scientific research “on or directly benefiting marine mammals.” Any other scientific research falls under the Incidental Harassment Authorization (IHA) procedure or the lengthy rule-making procedure leading to a Letter of Authorization (LOA). NRC (1994) recommends that the regulatory structure be altered to:

“Broaden the definition of research for which scientific permits can be issued to include research activities beyond those “on or directly benefiting marine mammals.” The population status of the species and the kind of “take” should determine the number of allowable takes, and the same regulations should apply equally to all seafaring activities.”

NRC (2000) similarly states that “the MMPA and NMFS regulations should include acoustic studies in the regulatory procedures related to approvals for harassment during scientific research.”

Although broadening the definition of research for which scientific permits can be issued would be an important step toward helping facilitate valuable marine research, the existing procedures for obtaining Scientific Research Permits are still quite burdensome for individual researchers. The procedures should be further simplified and streamlined. NRC (1994) concurs, stating that “the lengthy and unpredictable duration of this process can create serious difficulties for research.” One possible approach to streamlining the SRP process is to decentralize permitting authority to regional offices or committees. NRC (1994) suggests one method for doing so:

"Consider transferring some aspects of the regulatory process to less centralized authorities patterned after the IACUCs [Institutional Animal Care and Use Committees] that regulate animal care and safety in the academic and industrial settings."

Decentralization would help avoid the time delays associated with any process centered in Washington, D.C.

(ii) Categorical Exemptions

As noted above, underwater sound is routinely used by oceanographers for a wide variety of important purposes. The MMPA does not seem to have anticipated that the provisions of the act might be applied to instrumentation that is in widespread and on-going use, and it does not include a mechanism for allowing for such on-going uses other than through exemptions that must be applied for on a case-by-case basis. The National Marine Fisheries Service should clarify its position on the use of a wide variety of routinely used sound sources, and/or the act needs to be modified to provide for the issuance of categorical exclusions allowing for the use of instrumentation that has the potential for taking by harassment in situations in which the taking will be unintentional and will have a negligible impact on the affected species and stocks. NMFS should be tasked with issuing regulations providing categorical exclusions for uses of sound that meet appropriate criteria. Such regulations could include provisions excluding critical habitat from the categorical exclusions, if appropriate.

Conclusions

Both marine mammals and people use sound in the sea for a wide variety of purposes. The suggestions provided above are intended to facilitate the constructive use of sound in the sea and to improve our understanding of the impacts of underwater sound on marine life, while providing all appropriate protections for marine mammals.

A BILL

To authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2004, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 2004".

SEC. 316. READINESS AND RANGE PRESERVATION INITIATIVE.

(a) IN GENERAL.—(1) Part III of subtitle A of title 10, United States Code, is amended by inserting after chapter 101 the following new chapter:

"CHAPTER 101A—READINESS AND RANGE PRESERVATION

"Sec.

"2015 Purpose of this chapter.

"2016. Definitions.

"2017. Military readiness and the conservation of protected species.

"2018. Conformity with State Implementation Plans for air quality.

"2019. Range management and restoration.

"2015. Purpose of this chapter

"The purpose of this chapter is to:

"(1) protect the lives and well-being of citizens of the United States and preserve their freedoms, economic prosperity, and environmental heritage by ensuring military readiness;

"(2) ensure military readiness by addressing problems created by encroachment on military readiness activities and lands, marine areas, and airspace reserved, withdrawn, or designated for a military use;

"(3) reaffirm the principle that such lands, marine areas, and airspace exist to ensure military preparedness;

"(4) shield military readiness activities and lands, marine areas, and airspace reserved, withdrawn, or designated for a military use, including land, sea, and air training and operating areas, from encroachment, while ensuring that the Department of Defense fulfills its environmental stewardship responsibilities;

"(5) manage such lands, marine areas, and airspace for other purposes to the extent the non-military purpose does not reduce capability to support military readiness activities;

"(6) re-establish the appropriate balance between military readiness and environmental stewardship; and

"(7) establish a framework to ensure long-term sustainability of military ranges.

"2016. Definitions

"For purposes of this chapter:

"(1) The term 'military readiness activities' includes all training and operations that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. The term does not include the routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage, schools, housing, motor pools, laundries, morale, welfare and recreation activities, shops, and mess halls, nor the operation of industrial activities, or the construction or demolition of such facilities.

"(2) The terms 'combat' or 'combat use' include all forms of armed conflict and operational employment as well as those support functions necessary for armed conflict and operational employment, including transportation of personnel, weapons, supplies, ammunition and other military material to the vicinity of actual or potential armed conflict; intelligence gathering in support of actual or potential armed conflict; command of and communications between military units; and similar activities necessary for the successful prosecution of armed conflict, whether or not conducted at the scene of actual conflict.

"(3) The term 'the Department' means the Department of Defense as defined in section 101(a)(6) of this title and the Coast Guard when it is not operating as a service in the Department of the Navy.

"2017. Military readiness and the conservation of protected species

"(a) The completion of an Integrated Natural Resources Management Plan, pursuant to the Sikes Act Improvement Act (16 U.S.C. 670a), for lands or other geographical areas owned or controlled by the Department, or designated for its use, that addresses endangered or threatened species and their habitat, provides the 'special management considerations or protection' required under the Endangered Species Act (16 U.S.C. 1532(5)(A)) and precludes designation of critical habitat for any such land or geographical areas under section 4 of the Endangered Species Act (16 U.S.C. 1533).

"(b) This section does not remove the requirement for agency consultation under section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1536(a)(2)).

"2018. Conformity with State Implementation Plans for air quality

"(a) CONFORMITY WITH CLEAN AIR ACT.—In all cases in which the requirements of section 176(c) of the Clean Air Act would have applied to proposed military readiness activities, the Department shall not be prohibited from engaging in such military readiness activities, but shall:

"(1) estimate for all criteria pollutants for which the area is designated 'nonattainment' or 'maintenance' the quantity of emissions that are caused by the military readiness activities;

"(2) notify the state air quality planning agency for the affected area of such emission estimates prior to engaging in proposed military readiness activities; and

"(3) ensure that military readiness activities conform with the requirements of section 176(c) within three years of the date new activities begin.

"(b) EPA APPROVAL.—Notwithstanding any other provisions of law, an implementation plan or plan revision required under the Clean Air Act shall be approved by the Administrator of the Environmental Protection Agency if:

"(1) such plan or revision meets all the requirements applicable to it under the Clean Air Act other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of the Act, or in a regulation promulgated under such provision; and

"(2) the submitting State established to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of the Act, or in a regulation promulgated under such provision, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section.

"(c) EFFECT ON STATE COMPLIANCE WITH OZONE STANDARDS.—Notwithstanding any other provisions of law, any state that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 182(a)(2) or (5) or section 185 of the Act.

"(d) EFFECT ON STATE COMPLIANCE WITH CARBON MONOXIDE STANDARDS.—

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 186(b)(2) of the Act.

"(e) EFFECT ON STATE COMPLIANCE WITH PM-10 STANDARDS.—Notwithstanding any other provisions of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM-10 nonattainment area in such State, such State would have attained the national ambient air quality standard for PM-10 by the applicable attainment date, but for emission emanating from military readiness activities not otherwise meeting section 176(c) of the Act pursuant to paragraph (a) of this section, shall not be subject to the provisions of section 188(b)(2) of the Act.

"2019. Range management and restoration

"(a) DEFINITION OF SOLID WASTE.—(1)(A) The term 'solid waste,' as used in the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.), includes explosives, unexploded ordnance, munitions, munition fragments, or constituents thereof that;

"(i) are or have been deposited, incident to their normal and expected use, on an operational range, and;

"(l) are removed from the operational range for reclamation, treatment, disposal, treatment prior to disposal, or storage prior to or in lieu of reclamation, treatment, disposal, or treatment prior to disposal;

"(II) are recovered, collected, and then disposed of by burial or landfilling; or

"(III) migrate off an operational range and are not addressed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.); or

"(ii) are deposited, incident to their normal and expected use, off an operational range, and are not promptly rendered safe or retrieved.

"(B) The explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof defined as solid waste in subparagraph (a)(1)(A) shall be subject to the provisions of the Solid Waste Disposal Act, as amended, including but not limited to sections 7002 and 7003, where applicable.

"(2) Except as set out in subparagraph (1), the term 'solid waste,' as used in the Solid Waste Disposal Act, as amended, does not include explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that:

"(A) are used in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions);

"(B) are used in research, development, testing, and evaluation of military munitions, weapons, or weapon systems;

"(C) are or have been deposited, incident to their normal and expected use, and remain on an operational range, except as provided in subparagraph (a)(1)(A);

"(D) are deposited, incident to their normal and expected use, off an operational range, and are promptly rendered safe or retrieved; or

"(E) are recovered, collected, and destroyed on-range during range clearance activities at operational ranges, but not including the on-range burial of unexploded ordnance and contaminants when the burial is not a result of product use.

"Nothing in subparagraphs (2)(A), (B), (C), (D), or (E) hereof affects the legal requirements applicable to explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that have been deposited on an operational range once the range ceases to be an operational range.

"(b) DEFINITION OF RELEASE.—(1) The term 'release,' as used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.), includes the deposit off an operational range, or the migration off an operational range, of any explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof.

"(2) The term 'release,' as used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.), does not include the deposit or presence on an operational range of any explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof that are or have been deposited thereon incident to their normal and expected use and remain thereon.

"(3) Notwithstanding the provisions of paragraph (2), the authority of the President under section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a)), to take action because there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance includes the authority to take action because of the deposit or presence on an operational range of any explosives, unexploded ordnance,

munitions, munitions fragments, or constituents thereof that are or have been deposited thereon incident to their normal and expected use and remain thereon.

"(4) Nothing in this section affects the authority of the Department to protect the environment, safety, and health on operational ranges."

(2) The table of chapters at the beginning of such subtitle and the beginning of part III of such subtitle are amended by inserting after the item relating to chapter 101 the following new item:

"101A. Readiness and Range Preservation

.....2015".

(b) **MILITARY READINESS AND MARINE MAMMAL PROTECTION RECONCILIATION.**—The Marine Mammal Protection Act of 1972, as amended (Public Law 92-522; 86 Stat. 1027; 16 U.S.C. 1361, et. seq.), is amended as follows:

(1) **DEFINITIONS.**—Section 3 (16 U.S.C. 1362) is amended—

(A) by amending paragraph (18) to read as follows:

"(18)(A) Except as provided in subparagraph (B), the term 'harassment' means any act of pursuit, torment, or annoyance which—

"(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

"(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

"(iii) The term 'Level A harassment' means harassment described in subparagraph (A)(i).

"(iv) The term 'Level B harassment' means harassment described in subparagraph (A)(ii).

"(B) For purposes of military readiness activities, the term 'harassment' means any act which—

"(i) injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

"(ii)(I) disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered; or

"(II) is directed toward a specific individual, group or stock of marine mammals in the wild that is likely to disturb the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering."; and

(2) by adding at the end the following new paragraphs:

"(30) The term 'military readiness activities' includes all training and operations that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. The term does not include the routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage, schools, housing, motor pools, laundries, morale, welfare and

recreation activities, shops, and mess halls, nor the operation of industrial activities, or the construction or demolition of such facilities.

"(31) The terms 'combat' or 'combat use' include all forms of armed conflict and operational employment as well as those support functions necessary for armed conflict and operational employment, including transportation of personnel, weapons, supplies, ammunition and other military material to the vicinity of actual or potential armed conflict; intelligence gathering in support of actual or potential armed conflict; command of and communications between military units; and similar activities necessary for the successful prosecution of armed conflict, whether or not conducted at the scene of actual conflict.

"(32) The term 'Department of Defense' means the military departments and the Coast Guard when it is not operating as a service in the Department of the Navy."

(2) TAKING AND IMPORTING MARINE MAMMALS.—Section 101 (16 U.S.C. 1371) is amended—

(A) in subsection (a)—

(i) in paragraph (5)—

(I) in subparagraph (A), by inserting "and military readiness activities" after "other than commercial fishing"; and

(II) in subparagraph (D)(i), by inserting "and military readiness activities" after "other than commercial fishing"; and

(ii) by adding at the end the following new paragraph:

"(7)(A) Upon request by the Department of Defense for an authorization related to military readiness activities, the Secretary, shall allow, during periods of

not more than five consecutive years each, the incidental, but not intentional, taking of marine mammals of a species or population stock if the Secretary—

"(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact upon such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title, or in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 USC. 916 et seq.), pursuant to section 1382(c) of this title; and

"(ii) prescribes regulations setting forth—

"(I) permissible methods of taking pursuant to such activity, and other means of affecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries and mating grounds, and on the availability of such species or stock for subsistence uses; and

"(II) requirements pertaining to the monitoring and reporting of such taking.

"(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals granted under subparagraph (A), if the Secretary finds, after notice and opportunity for public comment (unless subparagraph (C)(i) applies), that—

"(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with; or

"(ii) the taking allowed under subparagraph (A) is having, or may have, more than a negligible impact on the species or stock concerned.

"(C)(i) The requirement for notice and opportunity for public comment shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to well-being of the species or stock concerned.

"(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

"(D)(i) Upon request by the Department of Defense for an authorization related to military readiness activities, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of marine mammals of a species or population stock if the Secretary finds that such harassment during each period concerned—

"(I) will have a negligible impact on such species or stock, and

"(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section, or 1379(f) of this title, or pursuant to a cooperative agreement under section 1388 of this title.

"(ii) The authorization for such military readiness activities shall prescribe, where applicable—

"(I) permissible methods of taking by harassment pursuant to such military readiness activity, and other means of affecting the least practicable impact upon such species or stock and its habitat, paying particular attention to rookeries and mating grounds, and on the availability of such species or stock for subsistence uses pursuant to subsection (b) of this section, or 1379(f) of this title, or pursuant to a cooperative agreement under section 1388 of this title;

"(II) the measures that the Secretary of Commerce or Secretary of Interior determines are necessary to ensure no unmitigable adverse impact upon the availability of the species or stock for subsistence uses pursuant to subsection (b) of this section, or 1379(f) of this title, or pursuant to a cooperative agreement under section 1388 of this title; and

"(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed military readiness activity may affect the availability of the species or stock for subsistence uses pursuant to subsection (b) of this section, or 1379(f) of this title, or pursuant to a cooperative agreement under section 1388 of this title.

"(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving a request under this subparagraph and request public

action or category of actions upon the Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of Interior, or both as appropriate, making a new determination.”.

Section-by-Section Analysis

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Authorization of Appropriations

Sections 101 through 107 provide procurement authorization for the Military Departments and for Defense-wide appropriations in amounts equal to the budget authority included in the President's Budget for fiscal year 2004.

Section 111 authorizes the Secretary of the Navy to enter into multiyear contracts for procurement of F/A-18 Aircraft, E-2C aircraft, the Tactical Tomahawk missile, and the Virginia Class Submarine in accordance with the request contained in the President's budget for fiscal year 2004. In these cases, using a multiyear contract has been determined to be the most cost-effective method for these platforms.

Section 112 amends section 131(a) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 to increase the procurement quantity of C-130J aircraft in the CC-130J configuration for the Air Force. The number is being increased from 40 to 42 and is required in order to execute the current budget plan.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Section 201 provides for the authorization of each of the research, development, test, and evaluation appropriations for the Military Departments; the Defense Agencies; and the Defense Inspector General in amounts equal to the budget authority included in the President's Budget for fiscal year 2004.

Subtitle B—Ballistic Missile Defense

Section 211 extends the availability of funds to provide for community assistance in areas affected by the building of Missile Defense test beds. In section 235(b)(1) of the Fiscal Year 2002 National Defense Authorization Act, the Secretary of Defense is authorized to use fiscal year 2002 Research, Development, Test, and Evaluation (RDT&E) funds to assist local communities in providing municipal or community services or facilities, where the need results from the construction, installation, or operation of the Ballistic Missile Defense System Test

Repeal of PLYWD, however, falls far short of committing the United States to developing, producing, and deploying new, low-yield warheads. Such warhead concepts could not proceed to full-scale development, much less production and deployment, unless Congress authorizes and appropriates the substantial funds required to do this.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Section 301 provides for authorization of the operation and maintenance appropriations of the Military Departments and Defense-wide activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2004.

Section 302 authorizes appropriations for the Defense Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2004.

Section 303 authorizes appropriations for fiscal year 2004 for the Armed Forces Retirement Home Trust Fund for the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the United States Naval Home in amounts equal to the budget authority included in the President's Budget for fiscal year 2004.

Subtitle B—Environmental Provisions

Section 311 would clarify the Secretary of the Navy's authority to provide salvage facilities and to assert claims for salvage services encompassing environmental response equipment and activities.

Marine salvage has evolved in modern times, both domestically and internationally, to include environmental response and pollution prevention. This is reflected in the text of the International Convention on Salvage, 1989, to which the United States is a party. Article 14 of the Convention expressly provides for special compensation to salvors whose operations prevented or minimized damage to the environment, but it does not apply to warships or other public vessels. In addition, chapter 637 (Salvage Facilities) of title 10, United States Code, currently contains no specific references to environmental response activities or related equipment even though pollution response equipment has been a part of the Department of the Navy's essential salvage capability and inventory for decades. Due to the inapplicability of the Convention, coupled with the lack of specific statutory language on the subject, it is uncertain whether the Department of the Navy has the legal authority to seek and accept appropriate compensation for valuable pollution response services in the absence of a "successful" salvage.

This section would clarify the United States' authority to assert claims for appropriate compensation when pollution response services are provided by the Department of the Navy

within the context of a marine salvage operation.

Section 312 would allow the Secretaries of the military departments to participate in wetland mitigation banking programs and consolidated user sites ("in-lieu-fee" programs) that have been approved in accordance with the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, as an alternative to creating a wetland for mitigation on federal property for construction projects.

Currently, the Department of Defense (DoD) must mitigate on-site for wetland impacts, which encroaches on the ability of the military to train and otherwise perform its mission. Costs and requirements associated with mitigation include development of a mitigation plan, construction, and monitoring for at least five years at each site. If the mitigation does not meet the requirements, more funds are necessary to bring the mitigation site up to required specifications. Currently, the Army Corps of Engineers (Corps), the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) recognize the importance of this type of mitigation and offer it as an option to onsite mitigation. By giving DoD the authority to pursue mitigation banking and consolidated user sites, land could be used for other mission essential programs.

Section 404 of the Clean Water Act (CWA) requires mitigation in order to replace aquatic resource functions and values that are adversely impacted under the CWA. The Corps, EPA, FWS, and NMFS issued final policy guidance on mitigation banking (Fed. Reg. Vol. 60, Nov. 28, 1995) and "in-lieu-fee" arrangements for the purpose of providing compensation for adverse impacts to wetlands and other aquatic resources. (Fed. Reg. Vol. 65, No. 216, Nov. 7, 2000), and may update it in conjunction with the Corps as appropriate. DoD seeks authority to participate.

This provision would not result in increased cost to DoD, and may result in substantial savings due to an anticipated decrease in mitigation costs.

Section 313. This new clause would simply exempt Restoration Advisory Boards from application of the Federal Advisory Committee Act. For nearly a decade, DoD has administered some 330 restoration advisory boards (whose purpose are to provide input when the Secretary of Defense is planning or implementing environmental restoration activities (RABs)) around the country in accordance with guidelines first established jointly by DoD and Environmental Protection Agency (EPA) in 1994. Last December, however, in response to a lawsuit concerning the Army's decision to terminate the RAB at Fort Ord, California, DoD agreed to promulgate (as required by 10 U.S.C. § 2705(d)(2)(A)) regulations governing the "establishment, characteristics, composition, and funding of restoration advisory boards."

DoD has 18 months to complete the rule-making process for these regulations. To meet this schedule, and to allow DoD to promulgate a regulation that will cause the least disruption to this successful and generally well-regarded program, DoD believes it would be advisable to

exempt RABs from the requirements of the Federal Advisory Committee Act (FACA). DoD's long-standing RAB guidelines, upon which DoD will base the regulation it must develop, already embrace most of the relevant FACA requirements. To require strict and complete FACA compliance would add burdens and costs, primarily administration costs, to the process of administering RABs without adding any appreciable benefits.

Section 314. This provision, which Congress recently passed, is unnecessary. DoD has appointed a corrosion official and is collecting relevant data requested by Congress. DoD would prefer to provide Congress with the relevant data as needed.

Section 315. The two amendments to title 42, United States Code, included in this section would make it clear that civil actions and criminal prosecutions brought under the Clean Air Act and Safe Drinking Water Act against Federal agencies as well as those against Federal officers brought in either an individual or official capacity may be removed to Federal district court. A Federal forum in such cases is vital, because State court actions against Federal agencies and officers often involve complex Federal issues and Federal-State conflicts, and the Federal courts are better situated to strike a proper balance between competing local and national interests.

The amendment in subsection (a) would incorporate into the Federal facilities provision of the Clean Air Act (42 U.S.C. 7418) language from section 313 of the Clean Water Act (33 U.S.C. 1323) regarding the ability to remove actions affecting Federal interests to Federal district court. This amendment would fulfill the clearly expressed congressional intent that questions concerning the exercise of Federal authority, the scope of Federal immunity, and Federal-State conflicts be adjudicated in Federal court. It also would clarify that suits against Federal agencies, as well as those against Federal officers sued in either an individual or official capacity, may be removed to Federal district court. This section would not alter the requirement that the ability to remove a lawsuit hinges on the assertion of a defense based in Federal law under 28 U.S.C. 1442(a)(1).

Recent court decisions demonstrate the need for this legislative change. In the case of *People of the State of California v. United States*, the U.S. Court of Appeals for the Ninth Circuit decided that section 304(e) of the Clean Air Act was not superseded by or inconsistent with a subsequently enacted 1996 amendment to the Federal Removal Statute (28 U.S.C. 1441 et seq.). Pursuant to this ruling, Federal activities could be enjoined by state courts, and penalties assessed, if these activities are found by a state court to violate provisions of state or local air pollution control laws. The Air Force already has been adversely affected by this decision. On March 18, 2002, a state court in California ruled that McClellan AFB was subject to civil penalties for violations of the Clean Air Act. The Air Force may be required to pay a fine of \$235,000 as a result of this ruling.

This holding will have severe consequences. While state and local courts are capable of applying Federal law, State and local judges (who may be untenured, appointed, or elected) may face pressures not present in the Federal courts when adjudicating matters and fashioning remedies involving Federal agencies, especially if the litigation generates significant local public

interest. Furthermore, subjecting Federal agencies to State and local court jurisdiction without reasonable recourse to the Federal system could provide local governing bodies the ability to tailor ordinances specifically designed to frustrate Federal activities, while not similarly burdening private, State, or local activities with a similar or greater impact on environmental resources. Without allowing removal of such cases to Federal district court, the United States would be forced to challenge such discriminatory regulation in each local jurisdiction.

Subsection (b) of this section would amend the Federal facilities provision of the Safe Drinking Water Act (42 U.S.C. § 300j-6) in a manner consistent with the above discussion to make it clear that actions brought under this law also are subject to removal to Federal district court. Such an amendment is necessary because the Safe Drinking Water Act contains language in section 300j-5(e) similar to that found in section 304(e) of the Clean Air Act, which the Ninth Circuit relied upon in denying the Federal defendant a Federal forum.

Section 316 would ensure that the armed forces of the United States are combat-ready from the first day of combat while defining some of the environmental stewardship responsibilities of the military departments.

Military readiness is essential to the security of the United States, to the protection of the lives and well-being of our citizens, and to the preservation of our freedoms, economic prosperity, and our environmental heritage. A well-trained and well-equipped military is a principal component of military readiness, and to be well-trained and prepared, it is imperative that soldiers, sailors, Marines, and airmen train in the same manner as they fight. Testing of military equipment, vehicles, weaponry, and sensors is also a principal component of military readiness. In this regard, live-fire testing and training are an integral and necessary part of realistic military operations, testing, and training. Military lands and test and training ranges (including land, sea and air training, testing, and operating areas) exist to ensure military preparedness by providing realistic test and training opportunities.

The shield of military readiness protects our Nation's environment—our land, air, and water, as well as the fish, wildlife, and plant species that inhabit them. In addition to defending against foreign threats, the military acts as trustee, helping to protect the environment by its prudent and conscientious management of the natural resources of our military lands. Largely as a result of this stewardship, military lands present acceptable habitat for plants and wildlife, including protected species.

The Department of Defense (DoD) is proud of its record of environmental stewardship and is committed to maintaining and improving its stewardship in future. Our successful stewardship reflects not only the conscientious efforts of the men and women of the Armed Forces but also the overall compatibility of the DoD's mission with environmental protection.

In recent years, however, novel interpretations and extensions of environmental laws and regulations, along with such factors as population growth and economic development, have significantly restricted the military's access to and use of military lands and test and training ranges, and limited its ability to engage in live-fire testing and training. This phenomenon —

often referred to as "encroachment" — has markedly restricted the military's ability to test and train realistically and, unless checked, promises to produce further restrictions in the future. Encroachment already has negatively affected military readiness and will continue to erode it unless this trend is halted. In some cases, environmental litigation threatens to thwart the primary mission of key military facilities.

National security concerns mandate that the military be able to train effectively, test systems adequately and realistically before fielding, and conduct military operations. Environmental litigation seeking to extend existing laws and regulations into contexts for which they were not designed, and which frustrate the use of military lands and test and training ranges for their intended purposes, requires focused legislation to ensure that military readiness receives appropriate consideration.

This proposal is narrowly tailored to protect military readiness activities, not the entire scope of DoD activities. The thrust of the proposal is to prevent further extension of regulation rather than to roll back existing regulation.

Section 2015. Purpose.

This section would set out the purpose of this chapter and would direct the Secretary of Defense to implement the chapter consistent with those purposes. The chapter would promote military readiness by addressing problems created by encroachment on military lands, airspace, and training and testing while ensuring that the DoD remains mindful of its stewardship responsibilities. It would reaffirm the principle that military lands and airspace exist to ensure military preparedness. Finally, it would establish the appropriate balance between military readiness and environmental regulation and would establish a framework to ensure the long-term sustainability of military test and training ranges.

Section 2016. Definitions.

This section would provide definitions for the terms "military readiness activities," "combat" and "combat use," and the "Department," as they are used in the statute. Through the definition of "Department," military readiness activities also apply to the Coast Guard, both when it operates as a service in the Department of the Navy and when it operates as a component of the Department of Homeland Security.

Section 2017. Military readiness and the conservation of protected species.

This section would clarify the relationship between military training and a number of provisions in various conservation statutes, including the Sikes Act and the Endangered Species Act. This section would provide that Integrated Natural Resources Management Plans under the Sikes Act provide the special management considerations or protection required under the Endangered Species Act and would obviate the requirement for designation of critical habitat on military lands for which such Plans have been completed. The Sikes Act requires military installations to prepare plans that integrate the protection of natural resources on military lands

with the use of military lands for military training. DoD must consult the U.S. Fish and Wildlife Service and the concerned State wildlife agency in the preparation of such plans and must seek their concurrence, as well as public comment on the final plan. Thus, the planning process offers adequate opportunity for consideration of the use of such lands for species conservation.

Section 2018. Conformity with State Implementation Plans for air quality.

This section would clarify the application of the conformity provisions of the Clean Air Act to make them more cooperative and not prohibitory when DoD activity is undertaken. The section would maintain DoD's obligation to conform its military readiness activities to applicable State Implementation Plans but would give DoD three years to demonstrate conformity. Under the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas.

Section 2019. Range management and restoration.

Subsection (a) would define the circumstances in which explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof are included in the definition of "solid waste" under the Solid Waste Disposal Act, and would exclude explosives, munitions, munitions fragments, or constituents thereof from the definition of "solid waste" under the Act when DoD deposits such items on an operational military range incidental to normal use, and such items remain thereon. Explosives, munitions, or munitions fragments removed from a range for reasons other than disposal, such as fragments removed for testing to determine weapon function, similarly, would be excluded. In addition, as noted above, this provision ceases to apply to such items when and if the operational range on which they were deposited ceases to be operational. This provision would clarify and confirm the Environmental Protection Agency's (EPA) Military Munitions Rule.

Subsection (b) would provide that the presence of explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof off an operational range, or the migration off an operational range of such items, constitutes a "release" under the Comprehensive Environmental Restoration, Compensation, and Liability Act (CERCLA), and would exclude from the definition of "release" under the Act the presence of explosives, munitions, munitions fragments, or the constituents thereof that DoD deposited incidental to normal use on an operational military range and that remain thereon. This provision ceases to apply to such items when and if the operational range on which they were deposited ceases to be operational. The provision explicitly would preserve the President's authority to address an imminent and substantial endangerment to the public health, welfare, or the environment under section 106(a) of CERCLA, and the DoD's authority to protect the environment, safety, and health on operational ranges.

The effect of these two provisions would be to establish the governing authorities under which DoD would manage its operational ranges, including the cleanup thereof. Explosives, munitions, munition fragments, or their constituents that land on and remain on an operational range, or land off range but are promptly rendered safe or retrieved, would be regulated

exclusively under the Military Munitions Rule promulgated by EPA. Those that migrate off the range would be addressed under CERCLA.

As noted above, neither of these two provisions would have any effect on the legal requirements applicable to such items once the range on which they were deposited ceases to be an operational range.

Subsection (b). Military readiness and marine mammal protection reconciliation.

This subsection is narrowly tailored to protect military readiness activities, not the whole scope of Defense Department activities. It creates a regulatory regime for military readiness activities that differs in a number of respects from current MMPA provisions of general applicability.

This proposal clarifies the definition of "harassment" for purposes of military readiness activities under the Marine Mammal Protection Act. To be considered "harassment," any military readiness activity must injure or have the significant potential to injure a marine mammal; disturb or likely disturb a marine mammal, causing a disruption of natural behavioral patterns to the point of abandonment or significant alternation; or be directed toward a specific individual, group, or stock of marine mammals, causing a disruption of natural behavioral patterns.

The new definition will provide greater clarity and notice regarding application of the Marine Mammal Protection Act (MMPA) to military readiness activities. It will also spare military readiness activities from the regulatory burden of seeking MMPA permits for relatively benign operations. The new definition will also bring about more certainty of application by regulatory agencies.

Additionally, the new definition reflects the position of the National Research Council (NRC). In a report published in 2000, the NRC stated there was no valid reason for regulating minor changes in behavior having no significant impact on the viability of the marine mammal stock. Rather, regulation should be focused on minimizing injury and biologically significant disruptions to behavior critical to survival and reproduction.

This proposal also provides definitions for the terms "military readiness activities," "combat" and "combat use," and the "Department," as they are used in the statute. Through the definition of "Department of Defense," military readiness activities of the Coast Guard are covered, both when it operates as a service in the Department of the Navy and when it operates as a component of the Department of Homeland Security.

This proposal would also cure deficiencies that currently exist when the authorization provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq) are applied to military readiness activities. Many of these deficiencies were recently highlighted in NRDC v. Evans, 232 F.Supp. 2d 1003 (N.D. Cal 2002), litigation that sought to stop deployment of the

Navy's Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar system.

First, given the multi-mission nature of many platform and sensor systems employed in military readiness activities at sea, it becomes increasingly difficult to single out the "specific activity" of the system that may impact marine mammals. The elimination of this requirement would allow greater flexibility in conducting military readiness activities. Further, the requirement to identify the relevant activity and the underlying rulemaking process that forms the basis for issuing a permit will allow the impacts and scope of military readiness activities to be appropriately scoped and analyzed.

Second, the litigation revealed that the migratory nature of marine mammals and the often varying biological and bathymetric features of geographic regions that migratory marine mammals occupy make it very difficult to identify "specified geographical regions" for military readiness activities that affect large portions of the ocean. The elimination of this requirement would allow greater flexibility in conducting military readiness activities without diminishing substantive environmental protections, since the underlying rulemaking process, which forms the basis for issuing a permit, will allow the impacts and scope of military readiness activities to be appropriately scoped and analyzed.

Third, the litigation also challenged the determination of that the SURTASS LFA sonar system would take no more than "small numbers" of marine mammals. The litigation revealed that Congressional reports on the MMPA have acknowledged that the "small numbers" criterion is incapable of definition from a quantitative point of view. Further, a "small numbers" limitation on the number of takes is inconsistent with the concept of allowing takes via a permit system and the "negligible impact" standard imposed by the MMPA in the permitting process. The "small numbers" limitation reflects a policy-based limitation derived from the moratorium on the take of marine mammals contained in the MMPA. In contrast, the "negligible impacts" limitation reflects a science-based limitation derived from the resource management policy of the MMPA. Given that takes are allowable via permit under the MMPA, the proper standard for measuring takes should be one determined only by science and based only upon resource management principals. Finally, elimination of the "small numbers" requirement would be consistent with the recommendations contained in the earlier-mentioned NRC report. Specifically, the report provided "it would desirable to remove the phrase 'of small numbers' from MMPA Section 1371(a)(5)(D)(i)" and that doing so would prevent the denial of permits for activities that might insignificantly harass large numbers of animals but still have "negligible impacts" on marine mammals.

The new subparagraph (E) makes it clear that although applications for harassment authorization or take permits should remain a public process where possible, in some instances concerning proposals involving military readiness, it may be impossible to disclose all information considered because some information has been properly classified in the interest of national defense. In some instances, it may not be possible to have public hearings because even disclosure of the nature of the proposal may disclose classified information.

Finally, the exemption for national defense addresses the lack of any national security exemption in the MMPA. Most environmental statutes provide authority to exempt certain actions or categories of actions for a limited period of time. Similarly the proposed exemption in the MMPA would allow the Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of Interior, or both, as appropriate, to exempt DoD activities or categories of activities from the requirements of the MMPA for up to two years, with renewable two periods of exemption. This provision is similar to the exemption provision in the Endangered Species Act, which allows the Secretary of Defense to direct exemptions on the basis of national security.

Subtitle C—Workplace and Depot Issues

Section 321 would make permanent existing authority due to expire in 2005. Section 2474(f) of title 10, United States Code, excludes all work performed by non-Federal personnel at designated Centers of Industrial and Technical Excellence (certain maintenance depots) from the 50 percent limitation on contracting for depot maintenance, 10 U.S.C. § 2466(a), if the personnel performing the work are hired pursuant to a public-private partnership. The exemption is limited, however, to funds made available in fiscal years 2002 through 2005. Limiting the exemption to four years inhibits private industry interest in establishing public-private partnerships which, by their nature, are most effective on a long-term basis. The existing time limitation seriously impedes the ability of both public and private sector parties to achieving the benefits envisioned with the enactment of this authority. The time limitation also discourages starting any efforts because of the potential adverse impact when the authority expires, and prevents any significant and often necessary capital investments, the expense of which is normally amortized over longer periods.

Section 322. The proposed amendment to section 2469 of title 20, United States Code, is intended to make it clear that section 2469 does not apply to current depot-level maintenance and repair workload performed under a public-private partnership pursuant to section 2474(b). While section 2474 authorizes the establishment of public-private partnerships to perform work, section 2469 essentially limits performance of current workloads that exceed \$3 million to either a depot or a contractor. This section is designed to enable effective consideration of partnerships for current workload. It makes clear that public-private partnerships, as authorized by section 2474(b), may be considered for performance of existing workloads where such partnerships are competitively established so that such arrangement can demonstrate that it offers a cost-effective means of meeting the Government's needs.

Section 323 would exclude workloads for special access programs from the limitations on the performance of depot-level maintenance of materiel by non-Federal Government personnel. Special access programs are typically low-density and highly specialized; therefore, there are few maintenance or sustainment concerns. Leveraging the contractor's investment used for the production of special access programs by contracting to meet sustainment requirements is a prudent approach. These unique characteristics of special access programs are recognized, and other statutes exclude special access programs. For example, section 2464(a)(3) of title 10,

**QUESTIONS AND ANSWERS SUBMITTED FOR THE
RECORD**

MARCH 13, 2003

QUESTIONS SUBMITTED BY MR. HEFLEY

Mr. HEFLEY. Mr. DuBois, in the Section-by-Section Analysis accompanying the Department's legislative proposals, DoD also states that many environmental laws are being applied in contexts for which they were not designed. Do you believe that CERCLA or RCRA were designed to apply to active ranges?

Secretary DUBOIS. CERCLA (Comprehensive Environmental Response, Compensation and Liability Act) and RCRA (Resource Conservation and Recovery Act) are designed to address certain types of activities—cleanup and waste management, respectively. To the extent these activities take place on an operational (which includes both active and inactive) range, these statutes may provide the appropriate regulatory regime to address the specific concern. Our view, however, is that it is not the location that should determine the appropriate statutory framework but, rather, it should be the activity to be regulated. DOD's legislative proposal seeks to clarify that the kinds of activities that should be addressed under CERCLA and RCRA while the range remains operational. Use of military munitions for their intended purpose should not be treated as a hazardous substance release under CERCLA or a waste management activity under RCRA. This view is consistent with the policies adopted by EPA and the States.

DOD's legislative proposal does not diminish or change DOD's obligation and commitment to implement CERCLA and RCRA where DOD activities logically fall within those regulator programs. We will continue to seek, obtain, and comply with RCRA hazardous waste treatment, storage, or disposal permits whenever we engage in waste management, even if that waste management activity takes place on an operational range. Likewise, our legislative proposal explicitly acknowledges the applicability of CERCLA on our operational ranges where activity on the range gives rise to an imminent and substantial endangerment to the public health or welfare or the environment. The Department's legislative clarification is limited to operational ranges, because ranges are critical to DOD training and testing missions. The proposal makes it very clear that the legal requirements applicable to munitions or constituents remaining on the range are not affected once the range ceases to be an operational range.

Mr. HEFLEY. Under DOD's RRPI proposal, if regulators are not permitted access to active ranges, how will the determination be made regarding whether munitions have remained on range or migrated?

Secretary DUBOIS. DOD has implemented, and continues to refine, a comprehensive operational range sustainment program. We are currently conducting, in response to Section 366 of the FY2003 National Defense Authorization Act, a comprehensive inventory of operational ranges (both active and inactive ranges as defined by the Military Munitions Rule). In addition, the FY 2004 Defense Planning Guidance requires the military departments to "assess potential hazards from off-range migration of munitions constituents." This reinforces my letter of January 4, 2002, which directed the Military Departments to develop "a strategy to assess the environmental impacts of munitions use on operational ranges." Additionally, DoD Directive 4715.11 (*Environmental and Explosives Safety Management on Department of Defense Active and Inactive Ranges Within the United States, 19 August 1999*) states that it is DOD policy to "minimize both potential explosives hazards and harmful environmental impacts" and goes on to require the military departments and other DOD components to "respond to a release of munitions constituents to off-range areas, when such a release poses an imminent and substantial threat to human health and the environment." DOD Directive 3200.15 (*Sustainment of Ranges and Operating Areas, 10 January 2003*) states that it is DOD policy to "institute multitiered (e.g., national, regional, and local) coordination and outreach programs that promote sustainment of ranges and operating areas (OPAREAs) and resolution of encroachment issues that promote understanding of the readiness, safety, environmental, and economic considerations surrounding the use and management of ranges and OPAREAs." Together, this cumulative direction provides a framework for information gathering, sharing with regulators, and coordinated action. In addition, the proposed legislation allows DOD to respond to off-range migration of contamination under CERCLA, as well as preserving the authority of state and federal

regulators to act under other authorities, such as RCRA or the Safe Drinking Water Act, should DoD fail to address the migration under CERCLA. Finally, the RRPI initiative expressly preserves the citizen suit provision of RCRA section 7002 and the authority of EPA to address an imminent and substantial endangerment under either section 7003 of RCRA or section 106 of CERCLA. These authorities apply with respect to munitions or constituents that have migrated off an operational range and to situations of imminent and substantial endangerment on an operational range. **Hearing Date: March 13, 2003**

Mr. HEFLEY. Mr. Secretary, in a perfect universe we understand that DOD would like for the Congress to adopt all five environmental proposals in the RRPI. However, that is not always possible. Please rate each of these five proposals in terms of priority of the Department.

Secretary DuBois. Each proposal is of extreme importance to the Department, as only the most urgent issues that could only be resolved through legislative clarification were included in the Readiness and Range Protection Initiative. The Department hopes to see each addressed by Congress. In terms of time-urgency, the Endangered Species Act/Marine Mammal Protection Act proposals are perhaps the most pressing, as they deal with situations where current lawsuits and court decisions threaten ongoing or imminent readiness activities (e.g. pending critical habitat restrictions at many locations, and the inability to test and train effectively with the Navy's surveillance towed-array sensor system/ Low Frequency Active (SURTASS/LFA) sonar system).

Our RCRA/CERCLA (Resource Conservation and Recovery Act/Comprehensive Environmental Response, Compensation and Liability Act) and Clean Air Act provisions are also essential to long-term range sustainment and readiness. The importance of the RCRA/CERCLA provision is demonstrated by the ongoing lawsuit at Ft. Richardson, Alaska, where plaintiffs have filed suit alleging violations of CERCLA and Alaska anti-pollution law applicable under RCRA. If successful, plaintiffs could potentially force remediation of the Eagle River Flats impact area and preclude live-fire training at the only mortar and artillery impact area at Fort Richardson, dramatically degrading readiness of the 172nd Infantry Brigade, the largest infantry brigade in the Army. If successful, the Fort Richardson litigation could set a precedent fundamentally affecting military training and testing at virtually every test and training range. With respect to the importance of the RRPI Clean Air Act proposal, I'd refer you to the answer to question 4, below.

Mr. HEFLEY. Mr. DuBois, some critics of the Department of Defense's legislative RRPI proposals have asserted that the amendment to the Clean Air Act is not necessary to permit the DoD to move its equipment or otherwise engage in readiness activities. Are you aware of any examples where the current version of the Clean Air Act (CAA) has an adverse impact on readiness?

Secretary DuBois. To date, individual conformity determinations have been addressed on a case-by-case basis and each resolved in a different manner. The planned realignment of F-14s from NAS Miramar to NAS Lemoore in California was only possible because of the fortuity that neighboring Castle Air Force Base in the same air shed had closed, creating emissions offsets. The same coincidence enabled the home basing of new F/A-18E/Fs at NAS Lemoore. The realignment of F/A-18 C/Ds from Cecil Field, Florida to NAS Oceana in Virginia was made possible only because Virginia happened to be in the midst of revising its Implementation Plan and was able to accommodate the new emissions. As these near misses demonstrate, under the existing requirement there is limited flexibility to accommodate readiness needs and DoD is barred from even beginning to take readiness actions until the requirement is satisfied. In these examples, the ability to home base these aircraft at the desired locations was dependent upon the right set of circumstances, not on existing flexibility in the law.

In addition, most of our readiness activities in nonattainment areas preceded the Act and its subsequent amendments. As long as those pre-existing and continuing activities remain relatively unchanged the Act's General Conformity prohibition does not apply. However, any significant changes in those continuing and recurring activities potentially fall within the proscriptions of the Act's General Conformity provision. For example, most of the weapons systems currently being operated in nonattainment areas were operating in those areas long before (in some instances for decades) the General Conformity requirement was enacted as part of the Act's Amendments of 1990. Thus, if we had no need to keep our forces modern our readiness activities might never be adversely impacted by the current Act.

However, when we must replace aging legacy systems (e.g., aircraft, vehicles, or equipment) in a given nonattainment or maintenance area with new ones, the Act strictly prohibits us from replacing even one weapon system, such as replacing an F-15C with an F-22, without first demonstrating that the entire action—replacing

all the F-15Cs with F-22s at that installation—conforms to the State Implementation Plan (SIP). Thus, while the current Act has not yet adversely impacted our continuing and recurring activities, we anticipate that our modernization will be adversely impacted by the Act without the proposed extension of time to comply.

Mr. HEFLEY. If so, how would this proposed amendment to the Clean Air Act assist the DOD?

Secretary DuBOIS. As noted in the previous answer, important readiness activities (stationing or rebasing of weapons systems, for example) could be initiated under the proposed amendment while their air impacts are factored into the State Implementation Plan. Within three years, these operations would be fully regulated and compliant with overall state plans for the non-attainment area.

Mr. HEFLEY. Would this have a measurable, long-term adverse impact on the environment?

Secretary DuBOIS. No. Currently, well over 90% of the sources of criteria pollutant emissions in a given nonattainment or maintenance area are usually private or non-federal sources not subject to the Clean Air Act Sec. 176(c) conformity provision. With respect to our Clean Air Act proposal, any new emissions the legislation would temporarily authorize are typically less than .5% of the total emissions in air regions. The Department is not seeking to remove existing Clean Air Act protections. Nor does the proposal alter the ultimate obligation on the part of the DoD installation to conform its military readiness activities to the State Implementation Plan. The legislation only provides an extension of time to demonstrate that conformity.

Mr. HEFLEY. It is our understanding that the DoD currently has numerous installations that overlie Sole Source Aquifers. Please identify all active and inactive ranges that overlie Sole Source Aquifers.

Secretary DuBOIS. The Department is currently building an inventory of operational test and training ranges in response to the requirements levied in Section 366 of the National Defense Authorization Act for Fiscal Year 2003. The Department is also conducting an assessment of potential hazards from off-range migration of munitions constituents. When the required inventory and assessment are available, the Department will identify to Congress the active and inactive ranges that overlie Sole Source Aquifers.

Mr. HEFLEY. If this committee adopts the DOD's RCRA and CERCLA proposals, what assurances can you give us that we will not encounter problems similar to the Massachusetts Military Range (MMR) contamination in other regions where ranges overlie Sole Source Aquifers?

Secretary DuBOIS. It is important to note that the primary statutory authority for ensuring protection of sole source aquifers is the Safe Drinking Water Act. The Readiness and Range Proposal Initiative (RRPI) does not affect any regulatory authorities under that statute. Additionally, as noted in the previous response, our proposal preserves existing RCRA and CERCLA authorities allowing the Environmental Protection Agency (EPA) to respond to circumstances presenting an imminent and substantial endangerment to human health or the environment. However, aside from the enforcement mechanisms preserved by our initiative, DoD has active programs in place to help minimize the possibility of future situations such as that at MMR. DoD's operational range sustainment program and continued research, development, and testing into military munitions and their effects on the environment will provide needed information, methods, and techniques to improve military operations in a way that protects the environment. The heightened awareness that has been brought to this subject over the years will also ensure that we remain vigilant in addressing contamination before it affects public health, welfare, or the environment. We continue to clarify the regulatory authorities that underpin our response actions, even as we improve our response capabilities. In addition, as discussed in our response to question 2, actions are being taken to more aggressively manage our operational ranges. Finally, we are working on minimizing future potential problems by developing "green munitions." This initiative is well underway and has already produced positive results for our small arms ammunition.

Mr. HEFLEY. Secretary Gibbs, your testimony mentions the Sikes Act and the requirement for the military departments to prepare Integrated Natural Resources Management Plans for lands under their control. Do you view this as a burdensome requirement?

Secretary GIBBS. No. Integrated Natural Resources Management Plans (INRMPs), are the principal tool that Air Force installations use to manage installation natural resources and integrate all aspects of natural resources management with military mission accomplishment. Because AF installations perform many different mission activities, and may also contain numerous federally listed endangered or threatened species, an integrated plan such as the INRMP is necessary to minimize conflict. A designation of critical habitat in an area already covered by an INRMP would be

a burdensome requirement, obligating the AF to redundant reporting and consulting without adding any protection for endangered or threatened species present.

Mr. HEFLEY. Secretary Gibbs, your testimony mentions the Sikes Act and the requirement for the military departments to prepare Integrated Natural Resources Management Plans for lands under their control. How does this requirement interface with the Endangered Species Act?

Secretary GIBBS. The Integrated Natural Resources Management Plan (INRMP), as required by the Sikes Act, is the principal tool that Air Force installations use to manage installation natural resources, and to integrate all aspects of natural resources conservation, protection, and management while maintaining no net loss of military mission capability. When federally listed endangered or threatened species, as defined under the Endangered Species Act, are present on an installation, the INRMP will address the management activities that must occur to ensure protection of the species. Managing species through the INRMP rather than through a designation of critical habitat provides for the same or higher level of protection, while still assuring the military mission capability is maintained; a balance envisioned by Congress with the passage of the Sikes Act. The AF successfully manages 78 threatened and endangered species on 47 installations using INRMPs.

Mr. HEFLEY. Secretary Gibbs, Please describe with specific examples the way in which the proposed amendment under the RRPI to the Clean Air Act would affect the Air Force's readiness capabilities.

Secretary GIBBS. Both existing and new Air Force readiness activities, and hence the Air Force's readiness capabilities, could be adversely impacted by the Clean Air Act's (Act's) existing prohibitory General Conformity provision. The current Act strictly prohibits taking any portion of an action, regardless of impacts, in a non-attainment or maintenance area without first demonstrating that the entire action will conform to the State Implementation Plan (SIP). Thus, if the Air Force needs to replace fifty aircraft that have been operating for decades in a nonattainment or maintenance area, it must first demonstrate that the ultimate replacement of all fifty aircraft, which may take five to ten or more years, will conform to the SIP before even a single aircraft may be replaced. The RRPI amendment would allow the Air Force to replace some of those fifty legacy aircraft for up to three years before having to demonstrate that the ultimate replacement of all fifty, which still may not occur for several more years, conforms to the SIP. Thus, the RRPI amendment would help ensure that the Air Force maintains or improves its readiness capabilities by granting an extension of time to demonstrate conformity with the SIP.

In addition, the Air Force regularly relocates forces among installations throughout the US and the world, to best position them for potential use and to optimize training opportunities. The current Act's strict General Conformity prohibition, applicable only to Federal agencies in nonattainment and maintenance areas, restricts the Air Force's ability to deploy personnel or relocate weapons systems, despite the fact that only minor levels of emissions may be involved. The proposed RRPI amendment to the ACT would provide more flexibility to the Air Force by allowing it and the states a three year period to accommodate or offset emission from military readiness activities that exceed de minimis. This would greatly facilitate the movement of military units among installations in order to best position them for potential use, and result in maintenance or improvement of readiness capabilities.

Mr. HEFLEY. Secretary Gibbs, What impact, if any, is the Clean Air Act in its present form having on the Air Force's readiness capabilities?

Secretary GIBBS. Continuing and recurring Air Force readiness activities have not been adversely impacted to date under the current Clean Air Act (Act). This is not surprising, because most (if not all) of our readiness activities in nonattainment areas preceded the Act and its subsequent amendments. As long as those pre-existing and continuing activities remain relatively unchanged the Act's General Conformity prohibition does not apply. However, any significant changes in those continuing and recurring activities potentially fall within the proscriptions of the Act's General Conformity provision. For example, most of the weapons systems currently being operated in nonattainment areas were operating in those areas long before (in some instances for decades) the General Conformity requirement was enacted as part of the Act's Amendments of 1990. Thus, if we had no need to keep our forces modern our readiness activities would probably never be adversely impacted by the current Act.

However, when we must replace aging legacy systems (e.g., aircraft; vehicle. or equipment) in nonattainment or maintenance areas with new ones, the Act strictly prohibits us from replacing even one legacy system without first demonstrating that the entire action—replacing all the legacy systems—conforms to the State Implementation Plan (SIP). Thus, while the current Act is not adversely impacting our continuing and recurring activities, we anticipate that their modernization will be

adversely impacted by the Act without the extension of time to comply proposed in RRPI.

As for new activities, such as the consolidation and beddown of a unit at a new training location, the current Act's General Conformity prohibition tends to chill their implementation in nonattainment areas or maintenance areas. For example, if a command needs to accomplish an action in a reasonable time and at a reasonable cost, it will likely avoid the selection of any alternative in a nonattainment or maintenance area. The current Act's strict prohibition—the requirement to demonstrate the entire action conforms before taking any part of it, regardless of the impacts—will almost always tip the decision scales in favor of an attainment area, no matter how operationally suitable the nonattainment area alternative.

Mr. HEFLEY. Secretary Gibbs, Please describe what impact, if any, the Marine Mammal Protection Act is having on the Air Force's readiness capabilities and national security.

Secretary GIBBS. The Marine Mammal Protection Act does not have a significant impact on Air Force readiness. The Air Force performs some monitoring at Vandenberg AFB and Patrick AFB/ Cape Canaveral AFS during space launch and missile defense programs, primarily as a result of potential for harassment from noise and visual impacts. To date, there have been no significant mission impacts as a result of these monitoring activities.

Mr. HEFLEY. Secretary Gibbs, Would an amendment to the MMPA have an impact on activities at Vandenberg AFB? If so, please explain.

Secretary GIBBS. The proposed amendment to the Marine Mammal Protection Act will have no known adverse impact on activities at Vandenberg AFB.

Mr. HEFLEY. Mr. Fatz it is our understanding that the Army currently has numerous installations that overlie Sole Source Aquifers. Please identify all active and inactive ranges that overlie Sole Source Aquifers.

Mr. FATZ. The Army has determined that twenty of its installations overlie or are in the recharge zone for sole source aquifers. Fifteen have active and/or inactive ranges and are as follows:

Hawaii

- Schofield Barracks
- Wheeler Army Air Field

Louisiana

- Fort Polk

Massachusetts

- Camp Edwards

New Jersey

- Fort Dix
- Fort Monmouth
- Picatinny Arsenal

- National Guard Training Center at Sea Girt

New York

- Fort Totten

Rhode Island

- Camp Fogarty

Texas

- Camp Bullis
- Fort Sam Houston
- Stanley Camp Storage Activity

Washington

- Camp Murray
- Fort Lewis

Mr. HEFLEY. If this committee adopts the DOD's RCRA and CERCLA proposals, what assurances can you give us that we will not encounter problems similar to the Massachusetts Military Range contamination in other regions where ranges overlie Sole Source Aquifer?

Mr. FATZ. Our RCRA/CERCLA provisions would codify and confirm the longstanding regulatory policy of EPA and every state concerning regulation of munitions use on operational ranges under RCRA and CERCLA. It would confirm that military munitions are subject to EPA's 1997 Military Munitions Rule while on range, and that cleanup of operational ranges is not required so long as material stays on the range. If such material moves off range, it still must be addressed promptly under existing environmental laws. Moreover, if munitions constituents cause an imminent and substantial endangerment on range, EPA will retain its current authority to address it on range under CERCLA section 106. (Our legislation explicitly reaffirms EPA's section 106 authority.) The legislation similarly does not modify the overlap-

ping protections of the Safe Drinking Water Act, NEPA, and the ESA against environmentally harmful activities at operational military bases.

We are mindful of the public's concern over potential environmental impacts and are aggressively developing and implementing an effective, comprehensive range sustainment program that will strike the appropriate balance between military training and testing, and sound environmental stewardship. As part of this effort, we are implementing a number of programs to better understand and manage the environmental implications associated with live-fire training.

For example, The Army is conducting Regional Range Studies. The studies are designed to gather credible data on the true environmental impact of live fire training and weapons testing. The concept is to study ranges at different installations representing a wide variety of climatic, geologic, and ecological settings. The program includes the development of field assessment protocols, field studies, and a lessons learned report that will include a tool to prioritize future range assessments. Soil, surface water, sediments, groundwater, and vegetation are sampled and analyzed for explosives and metals related to live fire. Small mammals are also studied to determine ecological impacts. Field protocols are being developed and will be continually refined over the course of the Regional Range Studies. The Army is also conducting studies on the chemical compounds associated with ordnance use. The project is aimed at identifying research requirements associated with the fate, transport, effect, and toxicology to assess the impact of ordnance on the environment. The major objective is to identify available data for modeling of chemicals typically associated with munitions and to compile toxicity benchmarks for these chemicals.

The Army is characterizing the scrap material generated as by-products of livefire training. Testing and training ranges produce scrap products that are regularly removed from the range as part of maintenance operations. Much of the range scrap produced contains valuable metals that can be recycled, but some of this scrap may contain hazardous residues that are handled in compliance with state and Federal requirements. In response to issues associated with the removal of range residue, the Army is chemically characterizing this material and developing management practices for the materials generated from the use of munitions at Army troop training ranges.

We are also investing in Research and Development to eliminate potentially harmful compounds from our ammunition throughout their lifecycles. The most notable of these efforts is the Army's "green bullet" and our efforts to eliminate potentially harmful dyes from smoke grenades that are critical to Army training. The Army has developed a substitute non-toxic material (tungsten/tin or tungsten/nylon) for the lead core bullet of our 5.56mm (M-16) round. The ballistics of the round are identical to the lead-core round, and we have authorized the procurement of about 5 million rounds this year. A similar effort is underway for our other small arms rounds including 7.62mm and 9mm rounds. Recognizing that two of the Army's smoke grenades contained potentially harmful substances; we developed alternative materials and are currently testing the products so the alternative formulations can be phased into production.

Mr. HEFLEY. As you are aware, a coalition of environmental groups sued the Army last year challenging the Army's range operations at Eagle River Flats Range, Fort Richardson, Alaska. Among the charges in this litigation is the plaintiffs' concern that munitions and their byproducts on the range have polluted the land and waters in the vicinity of Fort Richardson. Does the Army agree with the plaintiffs' assertion that the munitions have polluted the land and waters near Fort Richardson?

Mr. FATZ. No, The Army does not agree with the plaintiffs' assertion that munitions have polluted the land and water near Fort Richardson.

Mr. HEFLEY. If not, what evidence does the Army have that there is no pollution?

Mr. FATZ. Studies conducted between 1988 and the present indicate, except for white phosphorus found in sediments on range, there are no contaminants that pose a threat to human health and the environment at Eagle River Flats. Studies indicate that neither white phosphorus nor any other munitions constituent is migrating off Eagle River Flats Impact Area.

Investigations into the mortality of birds began in 1988-1990, with extensive fieldwork to determine if munitions or munitions compounds were the cause of bird deaths. During this time over 200 samples of water and sediments from various areas on the active range were obtained and analyzed for explosive compounds, metals, and volatile organic compounds. The only chemical of concern detected on Eagle River Flats was white phosphorus. The explosive 2,4-DNT was detected near the Open Burn (OB)/Open Detonation (OD) pad, but at levels much lower than cleanup levels. Nevertheless, active remediation for white phosphorus is now ongoing and should be completed in the next few years. Eagle River Flats is an active impact area managed by DoD. DoD, EPA and the state agree that there is no risk to human

health and the environment as long as the range is managed in accordance with DoD guidelines. (Record of Decision OU-C, Sept 98; Five-Year Review Report for Fort Richardson, AK, Feb 03)

A baseline risk assessment was conducted to analyze the potential, current, and future adverse health and environmental effects caused by releases and exposure to site-related chemicals. To develop the baseline risk assessment, a data quality review was conducted on all pre-Remedial Investigation data to demonstrate the adequacy and quality required under CERCLA and RCRA. The risk assessment demonstrated that white phosphorus was the only contaminant of concern on the Eagle River Flats Impact Area.

US Army Alaska applied for a National Pollution Discharge Elimination System (NPDES) permit under Clean Water Act for its artillery firing at Eagle River Flats. While there is legal uncertainty regarding the applicability of Section 402 of the Clean Water Act (CWA) to such activities, under the threat of pending litigation at Fort Richardson, the Army decided to apply for a CWA permit and ask for EPA's determination as to whether a permit is necessary. In the pending litigation, the plaintiffs allege that firing of munitions into Eagle River Flats may constitute the discharge of pollutants into a water of the United States. As specified in the NPDES application (submitted to the US Environmental Protection Agency (USEPA) Region 10 in April 2002), if EPA determines a permit is required, US Army Alaska will for a minimum period of five years, conduct monitoring of certain military munitions constituents that have the potential, to be transported off-range. Sampling will be discontinued after the Army shows that contaminants are not being discharged. Ongoing studies under CERCLA and the CWA demonstrate that US Army Alaska actively manages Eagle River Flats Operational Range and is in full compliance of current Federal, state, and DoD regulations. Therefore, US Army Alaska Environmental Resources Department has determined, with agreement from EPA and the State of Alaska that there is no evidence that munitions have polluted the land and waters in Eagle River Flats, except for the white phosphorous that is being remediated.

Data to support this determination has been documented in Eagle River Flats Comprehensive Evaluation Report (July 1994), OUC RI/FS (1996), Record of Decision OU-C (Sept 98), and Five Year Review Report for Fort Richardson, AK (Feb 03).

Mr. HEFLEY. If you do agree that the munitions from the range have polluted the land and waters, then is it prudent for this committee to adopt the DOD's RCRA and CERCLA proposals?

Mr. FATZ. The Army does not agree that the munitions constituents have polluted the land and waters near Fort Richardson.

In any case, the committee should adopt the RCRA and CERCLA in order to clarify Congress's intent that military operational ranges be used for their intended purpose—realistic military training. Under the current statutory language, these environmental statutes could potentially be interpreted to constrain or shut down live-fire training and testing and to require investigation and cleanup of munitions and munitions constituents on operational military ranges. Broadly interpreted, beyond what we believe Congress intended, RCRA and CERCLA could be used to require the Army to take ranges out of use and to perform costly environmental cleanup, thereby losing the ability to conduct live-fire that is so essential to military readiness. Moreover, the legislative proposals of the RRPI confirm DOD's responsibility to respond to munitions and constituents if they migrate off-range, if they pose an imminent and substantial endangerment either on or off range; or if they are present at former ranges.

Mr. HEFLEY. If the proposed RCRA, CERCLA, and Endangered Species Act (ESA) provisions in the RRPI were to become enacted, how will they make the Army's operations easier with respect to managing and protecting the environment?

Mr. FATZ. Past policies and practices that enabled us to successfully balance training and testing and environmental stewardship have come under attack by private litigants. These proposals simply help us maintain the status quo, consistent with the original intent of Congress regarding the application of these laws to the military. Passage of the Administration's RCRA and CERCLA provisions will allow the Army to focus scarce resources on the conditions and locations where munitions and munitions constituents would pose the most direct risk to human populations. Human exposure to munitions and constituents on operational ranges is limited by military control of the land and restrictions on public access. By focusing the application of RCRA and CERCLA to address munitions and their constituents if they migrate off-range, pose an imminent and substantial endangerment, or are present at former ranges, these legislative proposals are consistent with the protective intent of the statutes and ensure military ranges continue to be available for military

training and testing. These provisions clarify and affirm the existing Federal and state regulatory practices that balance the need to conduct military training in support of national defense and the protection of human health and the environment.

The RRPI Endangered Species Act (ESA) provision would ensure the continued availability of a valuable tool now used by the Services and the U.S. Fish and Wildlife Service (USFWS) to effectively balance conservation with military mission requirements. Without this RRPI provision, this highly beneficial practice is at risk as a result of a recent federal court decision. Critical habitat designation under the ESA can impose rigid limitations on the military's use of its vital training areas, denying commanders the flexibility to manage their lands for the benefit of both readiness and endangered species. Critical habitat designation removes flexibility by designating areas in a broad-brush fashion, as opposed to informed, site-specific decisions on the habitat needed for effective conservation of species. Allowing the Services and USFWS to agree to Integrated Natural Resource Management Plans (INRMPs) under the Sikes Act, with site specific conservation requirements carefully developed to achieve the delicate balance between military mission and the needs of the species, affords a highly effective substitute for the designation of critical habitat. Moreover, the use of INRMPs can potentially reduce the number of consultations under the ESA, allowing both the Army's resource managers and the USFWS (with regard to fish, the National Oceanic & Atmospheric Administration) to devote very limited assets to substantive conservation work directly beneficial to species.

Mr. HEFLEY. If this committee adopts the DOD's RCRA and CERCLA proposals in the RRPI, how will the EPA be able to monitor the levels of ground and water contamination at active ranges to ensure that we do not have contamination problems at these sites?

Mr. SUAREZ. Under the proposed bill, EPA would retain its information gathering authorities under RCRA and CERCLA with respect to munitions not used for their intended purpose and for non munition wastes or hazardous substances on operational ranges. For munitions used for their intended purpose on operational ranges, EPA would retain its authority to request information or documents from DOD concerning materials generated at an operational range under CERCLA § 104(e)(2). In addition, EPA would retain its information gathering authorities with respect to any contamination migrating off an operational range.

Under the Safe Drinking Water Act (SDWA), EPA has authority to gather information regarding contaminants in public water systems and in underground sources of drinking water. EPA's authorities under SDWA are unaffected by the proposed law.

Mr. HEFLEY. Are you aware of any examples where the existing language in the Clean Air Act has an adverse impact on readiness?

Mr. SUAREZ. No, I am not aware of any such examples.

Mr. HEFLEY. If so, how would the DOD's proposed amendment to the Clean Air Act assist the DOD?

Mr. SUAREZ. The proposed changes to the CAA would give the military the flexibility to move people and materiel around the country, without first having to demonstrate compliance with the receiving state's implementation plan (SIP) for air quality. The military will still have to quantify any air emissions increases for such a move and will have to demonstrate compliance with the SIP within three years.

Mr. HEFLEY. Would the DOD proposal in the RRPI have a measurable long term adverse impact on the environment?

Mr. SUAREZ. We believe at the RRPI sections in the Administration's bill preserve critical authorities for EPA, as well as States and citizens, to protect public health and the environment.

Mr. HEFLEY. As EPA interprets all current controlling law, does EPA have the authority to access active and inactive military ranges to conduct inspections for the purpose of measuring munitions contamination?

Mr. SUAREZ. Under current controlling law, EPA has authority to access both closed and operational ranges to conduct inspections for the purpose of measuring munitions contamination. As a matter of policy, as codified in the Munitions Rule under RCRA, EPA does not routinely access operational ranges for this purpose.

Mr. HEFLEY. How does EPA currently monitor the extent to which munitions contaminants may be migrating off range?

Mr. SUAREZ. EPA currently monitors whether such contaminants are migrating off range in the same way it assesses other potential environmental impacts from facilities and sources that are not otherwise directly regulated (i.e., subject to a permit of some kind): through a combination of inspections, self-reporting, ambient monitoring and citizen and state tips. In implementing requirements related to the unregulated contaminant monitoring provisions of the Safe Drinking Water Act,

drinking water systems of a sufficient size have been required to monitor for certain contaminants (including perchlorate, a munitions constituent), while EPA has performed sampling of a statistical subset of smaller drinking water systems. Under these regulations, at 40 CFR § 141.40, large drinking water systems (serving more than 10,000 persons) must monitor for perchlorate for the period 2001-2003. The results of unregulated contaminant monitoring can be used to help determine whether additional regulation is merited for certain contaminants as well as the occurrence of these contaminants in regulated systems.

FISCAL YEAR 2004 NATIONAL DEFENSE AUTHORIZATION ACT—STATE OF MILITARY READINESS: REVIEW OF THE PRESIDENT'S BUDGET FOR FISCAL YEAR 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
READINESS SUBCOMMITTEE,
Washington, DC, Tuesday, March 18, 2003.

The subcommittee met, pursuant to call, at 2:03 p.m. in room 2118, Rayburn House Office Building, Hon. Joel Hefley (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. JOEL HEFLEY, A REPRESENTATIVE FROM COLORADO, CHAIRMAN, READINESS SUBCOMMITTEE

Mr. HEFLEY. The hearing will come to order. Welcome to this afternoon's hearing on the military services' current state of readiness and review of the fiscal year 2004 operation and maintenance proposed budget.

I am pleased to have here with us General Keane, Vice Chief of Staff of the United States Army; Admiral Fallon, Vice Chief of Naval Operations; General Foglesong, Vice Chief of Staff of the United States Air Force; and General Nyland, Assistant Commandant of the Marine Corps, United States Marine Corps.

Today I can't imagine a more important topic than the readiness of our military forces. They are in the midst of executing a global war on terrorism, and are poised to carry out the President's order, should it be necessary, to disarm Iraq through force. The funding and management of operation and maintenance operations could not be more important.

O&M is the underpinning of readiness and sustainability; and I have some concerns about how well the military services are balancing the training, readiness, and quality of life of our forces.

Despite the current state of world affairs, the President's budget for fiscal year 2004 is really a peacetime budget. The Administration requests \$117 billion in O&M to sustain a peacetime force, but we are not at peace. The funding necessary to reconstitute our troops in the next fiscal year is unknown. I would expect priorities to change and new decisions to be made as more information is available. I expect, therefore, for each of the military services to keep this subcommittee aware of changes as they become apparent.

I would describe this peacetime budget as one that takes many risks and perhaps too many risks. I recognize that with limited funding, priorities need to be made and some level of risk needs to be taken. I have asked each of the witnesses to be prepared to dis-

cuss the risks within their budget and to address how that risk will be managed.

Let me highlight some particular areas of concern that I hope to address during this hearing.

First, the Army is short \$148 million in consumable repair parts; and its flying hour program could not be executed at the desired level. Also, the Navy is reducing its ship depot maintenance accounts \$600 million; yet, we are told that the Navy is funding its maintenance requirements to goal. The Air Force will need to do more with less. Funding for the Air Force flying hour program is down, and this year the Air Force unfunded requirement for depot maintenance is \$516 million. Finally, the Marine Corps cannot fully fund its initial issue requirement and can only fulfill 67 percent of its depot maintenance requirements.

Before turning to my good friend and Ranking Member of this subcommittee, the Honorable Solomon Ortiz, I would like to address with this panel the importance of providing timely and accurate information to this subcommittee. Your written statements submitted for the record should be accurate and responsive. We rely on these statements for your assessment of your states of readiness and to identify where additional funding might be required. I do not consider a written statement that fails to address risk and funding challenges to be an accurate or complete statement.

In addition, the subcommittee will submit questions for the record. I expect these questions to be answered in a timely fashion. Last year, one service did not submit its answers until seven months after the hearing; and I think all of you—because I have known most of you for some time—those at the table here understand that we are part of the same team. We are all part of the same team. You can do things we can't do, but we can do things that you can't do in the overall role of defending the United States of America. So we need to work as team members and not in any way, in any kind of an adversarial proceeding or role.

Now I would like to turn to Mr. Ortiz.

STATEMENT OF HON. SOLOMON P. ORTIZ, A REPRESENTATIVE FROM TEXAS, RANKING MEMBER, READINESS SUBCOMMITTEE

Mr. ORTIZ. Thank you, Mr. Chairman. I join you in welcoming all of our distinguished witnesses today to this Readiness Subcommittee hearing on the fiscal year 2004 budget request for military construction and family housing.

I think I have got the wrong statement, Mr. Chairman. We have got two committees, one right after the other, today.

I still welcome you here today.

I recognize that we do not have much time available today and that the committee's projected schedule does not permit time to revisit this project or subject prior to putting this bill together. For that reason, I will not spend much time with opening remarks.

This is indeed a perilous time for our Nation. There is no doubt that we have embarked on a new national strategy, and the support involving military strategy has already placed increased demands on military readiness, our military forces, to include Active

and Reserve components. And dedicated civilian employees are deployed more today than at any time in Desert Storm.

Mr. Chairman, as they face the likelihood of war with Iraq, they should know that we recognize their professionalism and appreciate the sacrifices made by them and their families. I would ask our distinguished witnesses to convey my expression of appreciation to them and their sacrifices.

I am concerned, Mr. Chairman, about our ability to sustain the readiness of our force. Based on my personal military experience and my tenure in the Congress, looking at readiness issues, I am convinced that our forces have never been more prepared to perform what we demand of them. But today, we find a number of activities that will degrade that readiness. This Nation is engaged in a nondefinitive war on terrorism. There is no exit strategy, and the cost, we understand, will be significant.

This subcommittee is conducting a hearing on the fiscal year 2004 budget that we know will not be executed as requested. We are also on the brink of a war with Iraq that the Administration has projected as being of short duration, using high-technology weapons and systems in support of a large number of deployed personnel. Additionally, the postwar occupation and nation-building activities will place additional stresses on the DOD budget.

To make matters worse, the ongoing war preparations and deployments are being financed using fiscal year 2003 appropriations that were intended for other purposes, with the anticipation that the Administration will replace them after the Congress approves a supplemental that has not yet been submitted.

We are all aware that there is a negative impact on readiness when the replacement funds do not match the amount of funds taken or are not available in a timely manner.

Mr. Chairman, I noted that there is an overall increase in the O&M budget request this year. But most of it is not in direct readiness activities. In some cases, in those accounts, there is a decrease in the planned expenditures. An example of that is the Army's request for funds for spare parts. I hope that the witnesses will tell us how they intend to compensate for the shortfalls in the direct readiness accounts and at the same time plan on continued high OPTEMPO, deployments, and requirements for replenishing high-cost weaponry, ammunitions weaponry, and the Nation's expanded involvement related to the probable war with Iraq.

I am also concerned about the heavy reliance on contractors in conflict areas. I have been unsuccessful in getting an estimate of the number of contractors in the potential theater of conflict from the Department, but a recent article in print media suggests that we could have as many as one contractor for every 10 uniformed personnel. We need not be reminded of some of the issues and adverse consequences that surfaced during Desert Storm regarding the use of contractors.

There is too much ambiguity at a time when we and our forces are facing this great, great risk. And, in fact, it wasn't too long ago that in Colombia three contractors were kidnapped.

Last, Mr. Chairman, another year has passed, and we have done very little to improve the readiness of our dedicated civilian work force. There continues to be much talk about the looming personnel

crisis, but little progress has been made to develop a comprehensive civilian personnel strategy. Such strategy is needed to provide a basis for determination of future needs and to identify the actions necessary to recruit, train, and retrain the quantity and quality of civilian personnel needed. I hope that the Department has not decided to rely on outsourcing as a solution to solve the civilian personnel problem.

I look forward to hearing your testimony today in light of the significant, unfounded lists submitted by the services and the still-not-submitted supplemental request to replace fiscal year 2003 funds that are now being used to make these deployments and moving of the troops, to see what the answer will be so that we can be ready, you know, with the funding that we so necessarily need.

Thank you so much, Mr. Chairman.

Mr. HEFLEY. Thank you, Mr. Ortiz.

And I would request that the witnesses, insofar as possible, kind of keep your statements to about five minutes so that we will have time for the questions and so forth. At the same time, we don't want to constrain you so much that you can't tell us what we need to know. So keep that in mind, and without objection, your entire statement will be put into the record.

Let us start, I believe, from left to right here, General Keane.

**STATEMENT OF GEN. JOHN M. KEANE, VICE CHIEF OF STAFF,
DEPARTMENT OF THE ARMY**

General KEANE. Thank you. Thank you, Mr. Chairman, Congressman Ortiz, distinguished members of the committee. I am honored to be here today with my fellow vice chiefs, and appreciate the opportunity to again appear before this committee to discuss the readiness of our Army.

I would first like to thank you for your support of the 2003 budget. It is another payment on critical requirements and sustains fundings of the Army's three priorities: winning the war on terrorism; preparing for a future war, which is transformation; and taking care of our people and their readiness.

Today, we are a nation at war. I cannot recall a time in our history, not since World War II, when our Army has been engaged in more places than it is today. The Army is in Kuwait, Kosovo, Bosnia, the Sinai, Korea, the Philippines, Colombia, and Europe. We are on the edge of war in Iraq, and we are already at war in Afghanistan.

More than 260,000 soldiers are deployed and forward stationed in 120 countries around the world; and to support these efforts, we have mobilized nearly 148,000 Reserve component soldiers. Our simultaneous commitment to these operations and the successes we have received—we have achieved, excuse me—present the best evidence I can offer on the Army's readiness. We are clearly ready, we are succeeding at our missions, and we are today ready to respond to the President's orders.

As for our future readiness and the President's 2004 budget, for the Army it represents a \$2.9 billion increase over the 2003 appropriation. Most of that increase is reflected in needed pay raises, pricing, and missile program transfers. In general, it is a balance-based program that will allow the Army to remain trained and

ready throughout 2004 while ensuring our force is protected as we war on terrorism.

Specifically, in terms of operational readiness, OPTEMPO was fully funded for 913 tank-miles and 13.1 flying hours per crew per month, and we fully fund 25 brigade rotations through our combat training centers. Sustainment, restoration, and modernization, or SRM, is funded at 78 percent of our requirements, \$2.34 billion, which is about straight line from 2003.

In order to fund sustainment, the sustainment portion of SRM, at 93 percent of requirements, we will be required to reduce funding to restoration and modernization.

We have also taken some risk in base operation support in order to help generate more than \$1.406 billion in the 2003 budget and \$658 million in the 2004 to replenish our depleted spare inventories and eliminate a significant readiness issue.

Base operations support funding for fiscal year 2004 is \$5.22 billion, and represents 75 percent of our requirements. In the 2003, we have funded base operations at a higher rate, 82 percent, and it was \$6.2 billion. Obviously, we have taken some risk here.

In terms of people readiness, in 2002, all three components of the Army achieved their overall recruiting mission for the third consecutive year, and Active and Reserve components made the 2002 quality goals. We exceeded our retention objectives.

Recruiting and retention is adequately funded in the 2004 budget at approximately 85 percent of our requirements; and all incentive programs, both enlisted and reenlistment, are fully funded.

In this budget, we will fund four housing privatization projects totaling 6,290 military housing units, and will expand this program through the 2005 to include another 28 projects, or 71,790 units, which will equate to approximately 82 percent of our worldwide total. Our goal is to eliminate inadequate housing by 2007, and we are on target.

For our single soldiers, the 2004 budget reflects \$738 million, MILCON, for barracks renewal; and we have committed to completing the barracks upgrade program by 2010, and we are on target for that as well.

The 2004 budget provides \$300 million to increase housing allowances, and reduces a soldier's out-of-pocket expenses to 3.5 percent; and we are on track to eliminate the out-of-pocket expenses entirely by the 2005.

The 2004 budget also provides, as you know, an average MILPAY raise of 4.1 percent and a higher targeted pay increase for specific rates in specialties.

In terms of personnel readiness, the budget is in good shape. In terms of readiness for future war, the Army has fundamentally changed in the way it fights and the way it deploys. This budget fully funds transformation with almost \$2 billion for the objective force, RDT&E, and funds the fourth Stryker Brigade of the six brigades we are fielding.

While this budget reflects balanced funding of our top priorities, it does not fund everything. We had to make some hard choices in addition to the ones I have already mentioned. We terminated 24 systems and restructured 24 others to generate over \$2 billion in the 2004 for transformation, and \$22 billion across the future years

defense program (FYDP). We reduced the recapitalization program of our counterattack corps from three and a third divisions to two divisions to generate \$385 million in the 2004 budget.

In conclusion, just let me say that maintaining a trained and ready Army is a shared responsibility. With your help, our Army is trained. With your help, our Army is ready. And, with your help, today, our Army is fighting and it is winning.

We appreciate your continued support, and I look forward to your questions. Thank you.

Mr. HEFLEY. Thank you, General.

[The prepared statement of General Keane can be found in the Appendix on page 297.]

Mr. HEFLEY. Admiral Fallon.

STATEMENT OF ADM. WILLIAM J. FALLON, VICE CHIEF OF NAVAL OPERATIONS

Admiral FALLON. Mr. Chairman, Mr. Ortiz, other distinguished members of the committee, it is truly an honor and a pleasure to be before again you this year with my fellow vices. And I want to report to you that today your Navy, our Navy, is demonstrating its true readiness around the world.

As we sit here this afternoon, we have 70 percent of the 306 ships in the Navy underway, the majority of them forward deployed. Seven aircraft carrier battle groups and 10 of our 12 amphibious ready groups are forward deployed in the theater of operations in and about Iraq today, which is a pretty remarkable testament to the amount of fantastic work that has been done, much of that resourced by this committee through your insistent push on the other Members of the Congress; and due to some hard work on behalf of the leadership, we have been able to undergo remarkable increase in readiness.

We have today the most capable force that I have ever seen us put to sea in more than 36 years of service. They are ready to serve, and they are ready to prevail should we be faced with a conflict here in the coming days.

This didn't happen by magic. There are many foundations for this readiness. I would like to highlight a couple.

First is manning. Today, the ships that are forward deployed are essentially fully manned, 99 percent across the board. That is a huge increase from where we were just three or four years ago. That wouldn't be possible without sustained investment by the Navy, by increases in compensation, by medical and retirement benefits, and by many other incentives provided by the Congress that have done a large—had a large part in convincing our sailors, our young men and women, to remain in the Navy and to enhance their skills to serve the Nation.

The second area is in the business of operational funding. Today, our people are ready because they have the appropriate number of steaming days and flying hours to hone their skills and to make them truly ready for what lies ahead.

Material condition: The parts, ammunition, maintenance of the ships and aircraft have been increased substantially and have put them in the position they are in.

Of course, without people that have the appropriate training, none of this is worth very much. And, in fact, they are well trained. The improvements in manning and the material readiness of the equipment have probably been the most important factors in allowing us to provide the surge in readiness.

Now, we are going to need your support and help. Clearly, we are eating into this year's budget, and we are going to need help with the supplemental to sustain us through the rest of the year.

Probably one of the biggest challenges we have facing us in the Navy, and I believe the other services as well, is how we are going to reconstitute the force when these current events are completed. We have to recap, we have to continue to recapitalize our Navy. We have made strides. As you know, in this year's budget, we were able to increase the number of ships we have planned and the number of aircraft we would like to build, but we need to sustain those increases.

We have made some strides in sustainment, restoration and modernization (SRM). In facilities in particular, I am happy to report that we have gone in this year's budget from 84 to 93 percent of the total requirement. We are not all the way there, but we are making progress.

We have other things to do. We are trying to transform this service. In areas that particularly pertain to readiness, I would like to highlight a few things.

First, we have an initiative to mission fund our shipyards. We have one that is operating under mission funding, a second that is in the process of conversion. We have two more of our public shipyards that are, in fact, still working under the Navy working capital fund. We believe it is to the benefit of the Nation and the Navy if we could convert to mission funding.

We have initiatives having to do with the way we operate our forces. We have a thing called "Sea Swap". We have just executed the first installment of that in the western Pacific. And the idea is that once we forward deploy a ship, that we might be able to sustain that ship in a forward deployed status without the transit back and forth to CONUS in some circumstances; and we are doing experiments in that line right now.

There are other challenges in the future. We are going to need your help. We appreciate all that you have given us. We are attempting to balance the risks to provide—to put us in the best position we can to be able to sustain today's current challenges and look to the future. We very much appreciate all that you have done for us, and look forward to working with you.

I have my written statement, Mr. Chairman, which I would like to have entered in the record, if you would, please. And I stand ready and pleased to try to answer your questions. Thank you very much.

Mr. HEFLEY. Thank you.

[The prepared statement of Admiral Fallon can be found in the Appendix on page 309.]

Mr. HEFLEY. General Foglesong.

**STATEMENT OF GEN. ROBERT H. FOGLESONG, VICE CHIEF OF
STAFF, DEPARTMENT OF THE AIR FORCE**

General FOGLESONG. Mr. Chairman, Mr. Ortiz, delegates, thank you very much; Congressmen, Congresswomen, thank you very much for letting us come over today.

I would like to echo what has been said earlier about the support you have given us. This is my second or third time, I can't remember, testifying over here; and each year I have kind of said the same thing. I blame you all for a lot of the good things that I am going to tell you about later on. So, we do appreciate your assistance.

It has been a busy year for the Air Force, and if you listen quietly at night, you will hear the 388th from Hill Air Force Base flying a couple F-16s over the Capitol 24 hours a day. And we have flown over 25,000 sorties over the CONUS in the last year, over 70,000 joint sorties with our comrades in arms in Afghanistan; and as this committee knows, there is not a day that goes by when we fly in southern Iraq and northern Iraq that we don't get shot at. So readiness is absolutely critical to us. We have got 42,000 airmen deployed as we speak, poised somewhere around the globe to do whatever the President is going to ask us to do.

I am also here to report today an anecdotal story about how important it is that we get this right. Air retention and air recruiting is up this year; I am happy to tell you that. One of the reasons for that, I remain convinced, being a maintainer myself, is it is much easier to recruit and retain, especially retain those crew chiefs, when they have the parts to go fix their airplanes.

So part of air recruiting and part of air retention is based in no small part on how satisfied our airmen are in doing their jobs. And when they have an airplane, an A-10 or an F-16, that is sitting out there ready to go, they feel a lot better about what they are doing. And that is one of the reasons that what you all are doing over here is so critical and important to us.

I will also tell you that there is good news in our supply rates. Our nonmission-capable-for-supply rates are down this year from last year when we were over here. Air cannibalization rates are down from last year when we—when I testified. Our mission-capable rates, and all these in aggregate, are up from last year when I came over to testify.

But I will tell you that our nonmission-capable rates for maintenance, the time we have to work on airplanes, is about level from last year. We attribute that to the fact that our airplanes are a year older. We have an aging fleet right now. And as I said last year, we have found new ways to break old airplanes, and so it just takes a little more maintenance on them every year. So we are concerned about that.

We have come in with a budget this year that has a reasonable amount of money, we believe, for spares or a reasonable amount of money, we believe, for depot maintenance; and I will explain that by telling you that we had an unusual last year and we anticipate having an unusual next several years in that our missions are much longer. We are trying now to establish a new baseline for what our spares and what our depot maintenance should be. In essence, if you don't have to start that engine so much, you don't

break the starter so much. So we are trying to figure out what our new baseline is.

We think we have adequately funded our spares and our depot maintenance, but I will tell you that we are going to have to worry about that as we execute. And we are committed to flying our flying hour program. We are absolutely committed to flying that flying hour program; that is essential to our readiness.

Now, having said all that, we also know that we have got some roadblocks ahead of us here, and Admiral Fallon just mentioned one of them. We have got a reconstitution issue facing us. Whether we go to war or we don't go to war, we have got a tremendous number of people deployed now. We have curtailed in many cases and substantially impacted in many cases our formal training programs to make sure that we deploy the right people. We will have to reconstitute from that as well.

We have people who are going to miss recurrency training requirements because they are deployed now. We will have to address that as they come back home as well. Eighteen out of 20 of our low-density, high-demand assets are either in surge or operating above surge. And we are going to have to do the math on that when those assets return.

Now, we are having our first meeting in two weeks to try to get our arms at a macro level around how to do that. But that is going to have a direct impact on our readiness, and we want to make sure that we have the right process and we have resourced right to make sure that all works out for us.

I would ask you to consider just in general two things that we think are very important for help, and I know the Department will be over to talk to you about these things.

One is, we have an incredibly useful and dedicated civilian work force. That work force is migrating its way through, agewise, in the Air Force; and within the next five years, 40 percent of air civilians will be eligible for retirement. And the Department will be over to talk to you about initiatives to help us with new hiring, to be able to expedite hiring, to be able to pay people appropriately; and to be able do those kinds of things will be fundamental to our recruiting and retaining that civilian work force.

And the second consideration I would ask is that—the Department will also be over, and we testified just last week, with some initiatives on environment. We all remain concerned with the way that we need to have clarified some of the laws that have to do with air environment, so that we are able to continue training on our ranges and do the testing that we need to do today, tomorrow, well into the future as well.

So I would ask you if you would consider those two things as that legislation comes over to you.

And then, finally, I am willing to take any questions you may have. Thank you very much.

Mr. HEFLEY. Thank you very much, General.

[The prepared statement of General Foglesong can be found in the Appendix on page 319.]

Mr. HEFLEY. General Nyland.

STATEMENT OF GEN. WILLIAM L. NYLAND, ASSISTANT COMMANDANT OF THE MARINE CORPS, UNITED STATES MARINE CORPS

General NYLAND. Chairman Hefley, Congressman Ortiz, distinguished members of the committee, it is an honor for me to be here today, as well, and represent your Marine Corps. I too would like to thank you very much for this committee's strong support for the issues and programs that are of such vital importance to the readiness of the Marine Corps; and similarly, I would ask that my formal statement be included in the record.

Today about 66 percent of the Marine Corps' operating forces are forward deployed, and Marine Corps operations throughout the past year have highlighted diversity and utility of expeditionary forces. This has been one of our busiest years in terms of operational deployments, participation, and realistic worldwide exercises and training events. To that end, we have ensured a trained, ready, and capable force for the Nation.

That said, I do believe that we have some challenges ahead. Like my colleagues, I see three close at hand: One will be the supplemental funding, the second will ultimately be reconstitution, and the third is encroachment.

As you are well aware, our current contingency requirements have grown beyond anyone's expectation and, consequently, significantly exceed the funding available. We appreciate your continued support and ask for timely passage of the Administration's upcoming supplemental request to provide the funding that will be essential to our accomplishment of mission.

Encroachment on our ranges and training areas is both an immediate and a future concern to providing realistic training for our Marines. I believe that this is truly a national issue that requires applying the proper balance to ensure that we are able to meet our Title 10 requirements. We greatly appreciate the interest and involvement of Congress in this issue, as you alone bring the holistic view that will be essential to address the significant impact of encroachment on our ability to provide training for our soldiers, sailors, airmen, and Marines.

We are currently doing what we are trained to do, and we are ready to support our Nation through whatever challenges may lie ahead. We remain your only sea-based, rotational, truly expeditionary combined armed force. We are ready to answer the call as part of an integrated joint force.

I thank you again for your continued support of your corps of Marines, as well as for soldiers, sailors, airmen across this great Nation. I stand ready to answer any questions you might have.

Mr. HEFLEY. Thank you very much.

[The prepared statement of General Nyland can be found in the Appendix on page 337.]

Mr. Ortiz.

Mr. ORTIZ. General Keane, I have a question for you, and this has do with the Reserve components.

You know, more than at any other time since the Korean War, our National Guard forces are being asked to serve in some capacity; and since 9/11, we find them serving in a variety of situations.

In addition to state missions, I know that they recently agreed to perform base security missions for the Active Air Force.

We have asked them to perform security screening at airports. I can remember going through the airport, and it was the National Guard that would do the screening. And last night I heard the President encourage their mobilization for enhanced security at other critical infrastructure locations here in the United States.

I am concerned about their readiness to perform some of the missions that they are being assigned to. General, I would like for you to address the following questions:

Are Guard units organized and trained to perform the variety of tasks we now find them being assigned? And what is the general scheme for determining if the mission is appropriate for the National Guard? And how do you decide which National Guard unit will be tasked?

And the reason I ask you these questions is because I—in my district alone, I have seen both Reserve units and National Guard units being activated. I just want to be sure that they have the training to perform the necessary task at whatever they are asked to perform. And maybe you can help me enlighten this a little bit.

General KEANE. Well, that is a very good question, Congressman. Thank you for it.

Certainly the missions that we are receiving, the numbers of those missions, the scale and magnitude, exceed anything that we have had in our recent history. And it is true, we are asking a lot of our Reserve components.

And let me just say up front, despite how short the alert-to-mobilization time that we have given them is, and some of it has been woefully inadequate; some of them have received only a matter of days that we have alerted them to mobilize, and that is certainly not enough time for an employer to react; and truth be known, it is not enough time psychologically for a family to react. But I have seen hundreds and hundreds of them, and they don't complain about it. They are absolutely remarkable about the call to duty and the sense of patriotism they feel about doing something that is important.

The tasks are different. One of those tasks you mentioned is the Army guarding Air Force bases, most of them here in the United States. General Foglesong and his staff asked us if we would consider doing that, and we have provided close to 9,000 to that mission, because that would have meant Reserve components in the United States Air Force would have been asked to do a second year of duty. And the people that we are asking of the 9,000 are doing a first year of duty. And that is just the team working together here, to burden-share the responsibilities and missions that we have out there.

Are they trained to do the mission? I think—I believe they are. In some cases, we have asked people to guard installations who are not military policemen. They are combat support troops or they are engineers or artillery or they are infantry, and we have been giving them some training to do that. The Air Force has also been working with us to make sure that they can handle those missions. Most of the other missions have been along their functional lines,

obviously in the missions that they performed in Afghanistan and the missions that we may perform in Iraq.

You asked another good question about, are we organized properly—I don't think we are—to do homeland security and also to do the warfight. Those two missions.

I think homeland security was a mission that was always there, but it was clearly a secondary mission and didn't receive a lot of prominence from us if we are just up front with ourselves about it. And I know we have taken a hard look at it, and we have put together what we call the Army Guard Restructuring Initiative to take a look at our Army divisions and restructure them so that they can do homeland security and warfight. And fundamentally what that means is that we are going to—we will put together multifunctional divisions which will have general purpose brigades inside of them; and we will take out of every heavy division two heavy brigades and put in a general purpose brigade or a multifunctional brigade, so it would be a little bit easier for them to do homeland security. That means they will probably have more infantry soldiers, and they will have more wheeled vehicles to be able to do that, and also perform functions overseas in that capacity as well.

So we do think we have to reorganize somewhat to be able to better perform homeland security missions and also do the warfight.

But the mission, the missions have been demanding, the scale has been demanding, and the performance of the soldiers has just been nothing less than remarkable. We are real proud of them.

Does that answer your question, sir? Did I get out all of it?

Mr. ORTIZ. May I just—of the National Guard and Reserves that are being activated, do they stay domestically replacing Active Duty personnel, or will some of them see action in Iraq?

General KEANE. It is both, sir. Some of them are replacing Active Duty here in the United States, and some are also deploying overseas. Many are in Kuwait, as we speak, by the thousands, and also there are a number of them supporting our operations in Afghanistan.

Mr. ORTIZ. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Rogers.

Mr. Evans.

Mr. Taylor.

Mr. TAYLOR. General, I was looking at the numbers given to us by our staffs, and I noticed in several instances there were actually reductions in O&M funding for the Guard and Reserve; in many instances, there were no numbers available at all. Given the high rate of deployment, given the high number of call-ups, that doesn't make any sense at all, unless someone is trying to disguise the true nature of the cost of this conflict. But I would give each of you an opportunity to respond to that.

I would certainly hope that is not the case. I think the American people are supportive of what we are doing, but they also need to know the costs.

General KEANE. I am not sure I understand the question. The—

Mr. TAYLOR. Well, sir, would you—I guess the question is, the Army Reserve, Army National Guard O&M account, in millions,

has been reduced by \$29 million. Given the large number of units that have been called up, how in the heck do you do that for less money than just having them doing their normal two weeks a year and one weekend a month?

General KEANE. Well, two answers to that question. First of all, I am not familiar with the \$29 million reduction. And I know you have got the facts in front of you, and I will take it at face value.

Mr. TAYLOR. Okay.

General KEANE. We did move money around in our O&M account, and it was a readiness issue that was driving it. The Army had a serious spares issue that we had to resolve, and that is what I alluded to in my oral statement. We moved some money around to take care of that spares issue. I don't know if that is the reason for the \$29 million reduction in the Reserves. I would have to check it.

Mr. TAYLOR. This is in the Guard, sir.

General KEANE. Excuse me?

Mr. TAYLOR. You have a slight increase in your Reserve budget of \$8 million, but you have a \$29 million reduction in the Guard O&M account.

General KEANE. Right. The way we are accounting for the increased operational expenses, as is reflective of the global war on terrorism and also of our preparations for war in Iraq, will occur in a supplemental; and we are trying not to take all of that money out of operating accounts.

Now, the way we are paying for it—the way we are budgeting it is not out of operating accounts. The way we are paying for it, obviously, we are doing just that. I mean, we are taking third and fourth quarter money in the 2003 to pay for the global war on terrorism and also to pay for our preparation in Iraq. But we have not budgeted the operational expenses for the global war on terrorism or for our preparation in Iraq; and that is arguable.

I mean, probably some of us would like to see in the 2004 budget the expenses for the global war on terrorism, at least as it pertains to Afghanistan; and I hope it will be in the next budget as we are now budgeting for Bosnia and Kosovo. I personally would like to have seen it in this budget, and then you wouldn't have to deal with it in the supplemental.

So, for 2003, we are going to have to deal with the global war on terrorism, operational expenses for Reserve components as well as Active, as well as our preparation for war in Iraq as a supplemental as well.

Mr. TAYLOR. I would like to open this up to the panel, given the high rate of usage of the Guard and Reserve.

General FOGLESONG. I will take a running shot.

Mr. TAYLOR. I guess my question would be, given that, and that there are, according to published reports, some hawks within the Administration who think that Iran ought to be next, and there is certainly some talk that Korea could be next, at what point do you gentlemen make the point that you don't have enough people? And who do you make the point to? Because I don't think you have a friendly ear in the Secretary of Defense.

So with that as a given, here is your opportunity if you feel like you are undermanned in your services.

General FOGLESONG. I was going to answer your first question, but I will go to the second one first if you would like.

Let me address your first question you asked about. And I am not sure this is the right answer, but I know in our case, as far as funding for Reserve component forces, it depends to a degree on how much new iron—because we are pretty iron intensive—that we flow into our Reserve components. So as newer airplanes and assets flow into Air Reserve components, we tend to find they are more efficient. We tend to be replacing older equipment with newer equipment, and on occasion that will drive air costs down.

And the other factor, in our particular case, we find we have Reserve component units that are funded two ways. One is through O&M, and the other part of the funding for flying hours comes from industrial funding. Some customer pays for them to fly their assets and deliver something somewhere; and that industrial fund has been pretty significantly tapped over the last year, and we anticipate that continuing to happen.

So the units find that the requirement for O&M funding levels off pretty quickly, because they are not only flying the hours from O&M, but stacked on top of that will be other hours from some customer that is asking them to fly.

So those are the balancing things that we try to do with our Reserve component. But I think all of us would tell you, the Reserve component is absolutely critical, absolutely critical to the way we are engaging today and will engage in the future; and we have all signed up to keeping them as ready as we can.

Mr. TAYLOR. Well, seeing how all of you gentlemen have the equivalent of four stars on your shoulders and, therefore, the chances of being denied another one are pretty slim, I would welcome your thoughts on whether or not the force needs to be larger. If you can't speak freely, who can?

General FOGLESONG. Sure. And I also——

Mr. TAYLOR. Go ahead.

General FOGLESONG. I don't want to capture this; I will also address that.

I believe the Secretary of Defense had this right last year when he asked us to review across all of our services where we have uniforms working now; and before we come to him and ask for a force structure increase, which we could conceivably do at some point, based on tasking that may come in the future—but before we do that, that we should look at where our uniforms are being assigned now and determine whether we have the right skill mix and whether we have—whether we have uniforms doing jobs that our civilians could do. Or do we have the right mix between the Reserve component and the Active component?

We are in the process, each of our services is in the process of doing that. And I will tell you, we are all out mining uniforms to come back into the mainline part of our services. We are looking at agencies across DOD, not just within our service, but across DOD, to see where there are opportunities to bring those manpower positions back into our own services to get them in warfighting positions or combat support positions that we are going to need at some point.

Now, that doesn't come free, of course, but we are in the process of establishing that baseline; and that will take some time. But we have identified a significant number, at least in my service, where we know that we can go out and convert to civilians, or we can buy a commercial service that could provide that service where some group of uniforms are doing it now and bring them back into the mainline of what we do for a living.

General NYLAND. Sir, I would comment on the end strength of the Marine Corps.

Certainly, last year, we achieved great support from the Congress in growing ours by 2,400. That said, we are also participating in the same exercises that my good friend Doc Foglesong addressed, also looking to find ways to return more Marines to trigger-pulling jobs from other things. But right now, due to the increase of last year, we feel relatively comfortable with our number as we continue to look for ways to put trigger-pullers back in platoons.

General KEANE. A couple of data points from the Army. Our Chief Shinseki, our Secretary Tom White, in the 2001 hearing and 2002, have both stated they thought the Army needed to be larger. We did not provide a number then.

What were—a couple of data points for you: For the year and a half that we have been supporting the war in Afghanistan, Operation Enduring Freedom, we have probably had mobilized a steady state of about 30,000 Reserve component soldiers to help us do all the chores that we have to do. That is a pretty good data point right there. We have had people look at this, independent from the Army, to try to get some views on it from others who would maybe look at it a little more objectively than we do. And we have had some feedback as low as about 20,000 to fill some of the holes that we have, which is close to that 30,000 and as high as about 45,000 more, so that we would have an adequate rotation base to deal with all the peacetime requirements we have in Sinai, Bosnia, Kosovo, and add to that probably Afghanistan and even possibly in Iraq in years to come. So that is all out there.

What is in front of us is defense planning guidance that we have received to take a look at the AC/RC mix. And there is a study in the Department of Defense that is taking place right now, as we speak, and we are participating in that study. We have got to sort through that because we do think, based on the demands that have been placed on us, that the AC and the RC mix may not be right. So we have got to turn that page before we make a judgment as to the size of the Army and what that final end strength number would be.

And then, you know, when you get down to it, Congressman, also there is an affordability issue with this. If you asked us, would you like to have 10,000 more soldiers versus transformation, we will tell you, no, because we believe the future readiness of the Army is transformation and we don't want to take some risk with that.

Would you want to have 10,000 more soldiers versus provide the quality of life that we are attempting to provide to our soldiers currently in the Army? The answer to that is no.

And so these are issues that we have to balance. And certainly the increased size of the Army is attractive to us. I think we will

finally sort out a number at some point after we have done these studies, and we may find that the number is not as great as we think it is right now as a result of them.

So we are not running from that question, Mr. Congressman. We deal with that issue on a regular basis, and we embrace it and deal with the results of it.

Admiral FALLON. Congressman Taylor, if I could make a few comments, back to your first question on Reserves.

The Navy found itself, in the immediate aftermath of 9/11 in response to the general global war on terrorism, had gone to the Reserve Force and asked for some help; and we ended up coming up to about 7,500 people at one time. And we were in the process of drawing those numbers down as we did two things: One, switch some, and particularly force protection personnel, from the Reserve to the Active force because we saw a continuing need as we looked to the future for full-time personnel; the other one was getting back to less than the surge state we were originally.

That has all changed now. With the current surge, we have increased the number back. We just went over 10,000 today of mobilized Reservists, and we are really grateful for them. They are filling specific skill sets and positions that we just don't have the capacity to do in the Active force today. That is one point.

Regarding the major issue of end strength, I think the Navy finds itself in kind of a unique position among the services today. We are blessed with people the likes of which we haven't seen here in many years, the third straight year of absolutely phenomenal retention. We have just never been in this business. Two years in a row, the average was 57 percent first-term retention; and now this year the number is up over 70 percent for the year to date—absolutely phenomenal.

We have been able to meet our accession requirements four straight years, month after month, and so we have got a really strong base of personnel.

As we look to the future and the realities of trying to balance our requirements for people to man the fleet at the current size and in what we see in the immediate future, we have to make trades, as General Keane alluded to. Where do we put the money? To bring on additional people, to pay for extra end strength certainly is not free.

As we look to the future, we had several initiatives under way that we had hoped would—and we had planned this way; in fact, in the 2004 budget, as compared to 2003 in our submission—to actually decrease our end strength driven by two factors: One is as we bring on more modern systems, particularly platforms, that we design into these platforms a requirement for less people than we had in previous days.

The second factor is that we have intentionally assumed some risk by decommissioning older units with higher manpower requirements for those crews than we would have. And so we thought we were going to be coming down.

In fact, with the surge requirements, we are back up, and our end strength today is about 383 and some hundreds, which is about 9,000 above where we thought we would like to end up at the end of this year.

So to directly answer your question, I don't see a need for additional personnel in the Navy at this time given the size of the fleet that we have today and what we project in the near years.

We do have an issue with the number of people on board the service right now. We have to figure out how to pay for that, we have to retain additional people to meet the global surge plus the Reservists coming on board. And so we have a near-term challenge. But I can't honestly tell you that we need to have an additional end strength growth based on where we are and what we see in the next couple of years, sir.

Mr. TAYLOR. Thank you, gentlemen.

Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman.

I have got a couple of areas that I would like to ask some questions, but before I do that, thank you very much, gentlemen. I know it is a trying time, particularly in your line of work, with what has gone on this week. And perhaps my question may not—given the actions we are about to undertake, may not be, in some people's minds, be relevant. But I want to—I notice that General Foglesong commented on the civilian work force and the implications for the readiness factor, to be able to support the warfighting commanders. And I would want the other gentlemen to comment on that along the same lines, but also focusing on what you feel is the current state of readiness of our civilian work force.

And, you know, we have had information that not only is it an aging work force, but it also represents a challenge for us because of the—at some point in the future, when they retire, when this aging work force retires, we are going to lose institutional memory, institutional expertise. And so one of the things I would like for you to comment on is, do we have any plans or are there any plans or possibilities that we would be able to provide surge capacity? That is, could we bring in a younger—prioritize bringing in a younger civilian work force to take the place of those that are going to retire? Because I think it is a real potential problem for us.

Mr. REYES. The other thing that I have heard is that the general consensus among the military is that you are more able to control contract employees than you are the civilian work force, and I was curious to get your opinion on that, and also under what circumstances would that apply?

General KEANE. Well, in terms of the civilian work force, we feel very strongly about the quality of that work force and its commitment to us in the Army. You know, I never really spent a lot of time around our civilian work force until I got the rank of Colonel and I found them to have the same level of commitment that our soldiers have. And it was a remarkable experience and I have been working with them, you know, very close now for about 15 years, and I have a deep and abiding commitment to who they are and what they represent in the United States Army. They are definitely a part of the team. The problem we have is the personnel system that supports them is not nearly as good as they are. In fact, it is fundamentally flawed. They don't deserve it, frankly. That personnel system, it takes far too long to be able to hire somebody. There is no real incentives in the system to be able to reward perform-

ance the way we would like to. Even a simple thing like job descriptions when we—when it is natural for a boss to give an employee a little bit more responsibility, it takes forever to get credit for that and sometimes never do you realize a pay increase because of it. There is relatively no leadership training whatsoever that takes place in the civilian personnel system to give people the management skills that they need to grow and develop. The parallel system in the uniformed side, from our noncommissioned officers and our officers, we have a professional development education system to give them the additional skills that they need to meet added responsibility. There is no corollary for that in our personnel system; and what has happened is throughout the Army, you have islands of excellence where people are trying to do some of that themselves. I did it at Fort Bragg, North Carolina. I formed a thing called the Dragon University, where we did civilian management training for our work force. It was something we were just doing on our own out of our own funds because the personnel system as a whole was not responding.

The Department of Defense is going to propose some legislation eventually that will help, I think, correct some of this and we are very optimistic about it in the legislative package. And I hope I am not speaking out of school in reference to it, but it is just a dynamite program. What a novel thing it would do. It would permit people to hire youngsters out of college or who have graduate degrees at a work fair on the spot, something that is novel to the Federal Government, and the Department of Defense wants to experiment with that and let us run the pilot program for it. National security is just too important. Right now it takes six months for that person at that job fair to be hired, whereas all the competing companies are there, the people you are competing with can hire on the spot. We can't do things like that. We need pay banding so that we can provide people different salary scales based on their level of responsibilities. And we need to incentivize them so we can give them more money because of their performance or take money away from them because of their low performance. And we need to also remove from the work force those who are not performing a little bit more judiciously than what we need. So there are some things we need to do to fix the personnel management system, I think, which supports our civilian personnel.

The contractor business that you mentioned, Mr. Congressman, is certainly of concern to all of us. As you know, in the Federal Government there is an effort to privatize some of our functions and this has been going on for a number of years. And we have done some of it, and some of it does make sense. When I was a commanding general, it made sense for me to privatize our utilities at an installation and have somebody else run that utilities function rather than the United States Army. But some other things don't make sense because they are too much of a part of what we do. And here is what concerns me about the contractor business. When you have a civilian employee, that employee's loyalty is to you, the institution itself, the United States Army, and there is a bond that is created between that civilian work force and this institution called the Army, much as there is among our soldiers in the Army itself. When we hire contractors to do that, the loyalty is to

the company. It is not to the institution called the United States Army. And that is one of the concerns I have, and we have probably gone too far with the amount of contractors that we have. I mean I am speaking for myself here. And we have done it too much in the Pentagon. We rely on them too much as we were downsizing our civilian work force. And it is easy to do, I think, and it has become a crutch for us. And we are attempting in the Army to get ahold of this and discipline ourselves; and the Secretary has provided us some guidance in that matter as well.

So I hope those points are able to give you some sense of how we feel about the civilian work force and also the relationship with contractors. Now, let me say something else about contractors. I mean, they provide valuable service to us, and some of the skills that they provide to us would be very difficult for us to get except through contractors, and so it is very appropriate for them to be with us.

Congressman Ortiz mentioned contractors before, and we have literally thousands of contractors in Kuwait as we speak who are helping us work on aircraft and other vehicles, and they have been an important part of our deployment. So I hope those points answer your questions.

Admiral FALLON. Mr. Reyes, if I could address a couple of those points. First, I certainly concur that we need some help, and certainly the Congress could be of great benefit to us in the business of the work rules and processes and procedures you have got to go through to deal with our civilian work force. They are antiquated, they are cumbersome and very, very challenging. That said, the Navy is committed to working to not only revitalize our civilian work force but to make them or try and encourage them to feel the same kind of affinity to the institution that is being demonstrated by our people with their reenlistment rates and the attractiveness of service now. One of the positive steps, the boss, Chief of Naval Operations, last year put the Chief of Naval Personnel in charge of all Naval personnel, not just the uniformed folks but the civilians, as a clear sign that we are going to put our money where our mouth is; and we are going to work with our civilians just as much as we work with our uniformed personnel.

In terms of areas of focus, shipyards are a big concern. We have got a significantly aged work force. Maybe not quite as aged as the group here in front of you, but clearly something needs to be done there. And—sorry, guys. One of the initiatives that we have undertaken with the shipyards is an apprentice program, which has basically jumped almost tenfold since its inception back in the late 1990s. We have got almost 700 new young people that are with our shipyards now that are learning trades on the job, and we think this is exactly the kind of thing we need to start building from the bottom. We also made—several individual shipyards have made arrangements with local colleges and tech institutes to feed the shipyards at the high end. We are making an investment in our most senior people. We are including our senior executive service (SES) people now in the same identical career development and professional development programs for our flag officers. We are including them in all of our key meetings, and we are actively recruiting interns into the higher levels of the civil service in jobs, not just in

the blue collar trades in the shipyards and the high tech trades, but in the management and administration jobs in Washington and other places.

So we are taking positive systems. We know there is work to be done. We know what the demographic lines look like and we have got some challenges. We need some help from you on that one, please.

Mr. HEFLEY. Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman. Gentlemen, I want to thank you for a recent operation in Afghanistan. Obviously that was a big success. All of the services coordinated that very well. But what concerns me is after the combat operations ended to secure that country, where did all the services find themselves, especially in the Air Force situation? Obviously you run an air cap around the United States. You have continuing air operations along with the Navy outside of the United States. Where did that leave us as far as ammunition, spare parts, and maintenance on equipment at that time? And what did we have to do since then in order to get to where we are at today hopefully?

I guess we could start with the Army and just kind of move on down.

General KEANE. Well, first of all, sir, thank you for your compliment on Afghanistan, and let me emphasize that we are still in a war in Afghanistan, and I average two or three soldiers a week being wounded and two or three a month being killed. And I have got five or six of them in Walter Reed right now who have been wounded and lost their legs, and they are just tremendous soldiers. And I think we will be there for a while as we try to stabilize that country.

Our commitment to Afghanistan in terms of the United States Army is about 7,000-plus soldiers. So it is a relatively small force by the size of the Army. We provide essentially a combat maneuver brigade to General McNeill to be able to conduct combat operations and also some support troops for him to be able to do that on the ground. He obviously has support from the air as well as from the sea. The supplemental last year addressed the needs that we had in terms of what our requirements were and certainly we are hopeful that the supplemental this year will address those needs.

The problem we have, the problem all of us across this table have in terms of providing funding for an ongoing war and preparing for another one is that we are doing it out of the current budget that we are attempting to execute, whose monies were for another purpose. And so what we have all done is we had moved money from the third and fourth quarter to pay for ongoing operations in Afghanistan and also to pay for our preparations in Iraq. To give you a sense of it, in the Army we could not make—if we don't get a supplemental by mid-June, we cannot make the payroll at the end of June. We haven't been in a situation like that in many, many, many years. And we start to cut deeply into our operation and maintenance accounts in May. And we are obviously cash flowing an awful lot of money. The United States Army is close to a billion dollars a month that we are cash flowing, so the timing of the supplemental for us to pay for the replenishment of our fund-

ing is critical to us; and we certainly need your help in getting the supplemental approved as soon as possible.

Admiral FALLON. Congressman Calvert, from the Navy's viewpoint, the specific things that you mentioned, ammunition and spare parts and reconstituting the force from Afghanistan, we were able to parlay the Defense Emergency Response (DER) funding that was made available in the supplemental to target those areas specifically as the first priority; and so today I can tell you that as we stand on the brink of another potential conflict, we have just about maximized the investment possible into precision guided munitions; for example, particularly air-to-ground munitions, to the point that we just about have at capacity, and we have been running at capacity now for many months, and so we have put ourselves in a much better footing than we were before.

Mr. CALVERT. Where were we? I am just curious. Right after the primary Afghanistan conflict, I should say, where was the Navy at?

Admiral FALLON. Well, the facts were that we had just about run out of the joint direct attack munitions (JDAM) and that is a couple of factors there. One is the fact that it was a new munition just recently introduced and by the plans prior to Afghanistan, we had a—and we did this as a joint purchase with the Air Force. We had agreed a split of those weapons, and the Air Force had a larger number of the initial weapons.

Mr. CALVERT. Would it be accurate to say if something happened somewhere else in the world, you would have been pretty hard pressed to come up with the additional ordnance?

Admiral FALLON. Well, certainly for that weapon we would have been challenged. We did have greater stocks of laser guided bombs. We have since, now with both of those weapons pretty much gone to full facilitization with industry to crank those production lines up. We did have other weapons, substantial quantities of others. They wouldn't have been the preferred weapons based on the inputs we get from the unified commanders today.

Spare parts, the fact that we were making substantial investments with the goodwill and support of the Congress to make this happen, has paid off in spades because the demonstrated readiness surge today of seven battle groups forward deployed, and the readiness numbers look really good with those folks, I think is a clear indication of the payoff of the investment in parts.

The challenge is going to be we are eating into this year's funding. We are taking it right off the back end, and we have opted to continue to do the things that we were planning to do up to this point in the year; but a couple of months down the road we are going to flat run out of money in all the things you wanted to do. And the problem with that is, as you are well aware, is as you get later into the year, the effectiveness of the expenditure of those dollars decreases. So we know we are going to need some help there.

The other issue is when this is—even if something were to happen that would preclude the necessity to go into combat operations here in the near future, the expenditure of funds already to put this surge forward has been very substantial. So we are going to have to figure out a way to reconstitute the force and that is going to require some dollars.

General FOGLESONG. On the verge of getting a personal foul for piling on I would like to "me, too" that. After Afghanistan, we were just about out of our preferred munitions, JDAM. But to a large degree it was because it was a new acquisition and since then we have been able, with the Navy, to increase the production rate substantially as a result of funding that we got this year; and so actually we are in pretty good shape and we do have a good exchange program. We know—Fox and I work together routinely to make sure that we have got the right amount of bombs in the right bins when either ships deploy or squadrons deploy somewhere, and the same with laser guided bombs. We have substantially increased our production there. But we are spending \$27 million a day on ENDURING FREEDOM and on preparations for Iraq right now. We are cash flowing most of that and so, like General Keane said, we will be in a position here in the not too distant future where we are going to have to have some help, some supplemental help, to make sure that we can get through the rest of the year.

Mr. CALVERT. Just to add to that a cost that we don't really think about, the air cap cost of not just in the cost of operating that aircraft, but the number of hours those aircraft are operating. Where are we at as far as—

General FOGLESONG. We were able to, thanks to the help of Congress, we got money to help pay for those air cap hours; and once again I will go back and say what I have said before. Incredibly valuable, the help we got from our Reserve component at the time. As this committee knows, after the 11th of September, the people who were flying over all of our cities in this great Nation of ours were volunteers from the Air National Guard, and those volunteers, a lot of them are still with us today; and so that has been of tremendous importance to us as well. And we also had a period of reconstitution after Afghanistan that we have been able to regenerate, bring some assets home to reformalize some training to catch up on currencies before we have had to redeploy them.

General NYLAND. Sir, as the last one to get the ball, let me come through the same hole in the line. We were saved after Afghanistan quite honestly by the help of Congress. The aviation assets, most of ours fly off of Navy ships and you have heard the explanation for where we were and how we are better now. Our rotational forces were prepared to do it but it was costly. It is even more costly right now for us to continue OPERATION NOBLE EAGLE and ENDURING FREEDOM and, as General Keane indicated, we are taking money out of the fourth quarters and the third quarters to keep it flowing. And so I think that, as we said in our opening statements, we would continue to seek the great support of the Congress in a supplemental to keep this going, with or without any combat ops in the future.

Mr. CALVERT. Thank you.

Mr. HEFLEY. Mr. Larsen.

Mr. LARSEN OF WASHINGTON. Thank you, Mr. Chairman. And I want to first off, start off by thanking this committee and Congress for its efforts to support the Navy's efforts to ensure that the Prowler aircraft, the EA-6B Prowler, can continue to fly and be a continued viable platform for electronic aircraft, electronic warfare, until its time is replaced by the EA-18G. And I wanted to touch

on Admiral Fallon's written comments on page 4, I think, of his written testimony, which indicates that the Prowlers continue to fly but there is still some outer wing panel issues that need to be dealt with. And it wasn't, you didn't outline it in your testimony, but do you expect Congress to address that through the supplemental, or is that something that we are going to be looking at as part of the 2004 budget and beyond? Just the wing panel issue.

Admiral FALLON. The answer is both. We have got in the budget a request for funds to do a certain number of those. I suspect that, given the wear and tear that is ongoing right now, that when we assess where we really have been that we are probably going to need some more help. This is a risk equation that we have to look at every day, frankly, Congressman. We have made a decision to recapitalize and replace that aircraft with a follow-on platform. It is still several years away, and we are going to try and balance expenditures so that we don't needlessly throw money at a machine that we know we are going to want to trade in here very shortly. On the other hand, we certainly aren't going to compromise safety; and we are going to try and ensure that we have the readiness we will require until we get the new machine.

But I would, on the Prowler, now this is an example of how quickly the system can respond and how, from a previous question, the civilian work force pulls together with the contractors and our uniformed people. We had a challenge with the EA-6B with a J52-408 engine that powers that machine. A little over a year ago we were in a pretty sorry state here with 40 some engines not in their respective places in aircraft. Everybody turned to. We put some substantial amount of money against it, and within six months have totally turned the corner. And so as we face the potential brink of war today, that force has been brought back up to speed, no bare fire walls; and we are really ready to go, and so it is an example of what can be done. We got it in the nick of time. I don't know what might have happened if we had let it slide any further. But this is really a problem. This aircraft has been a tried and true warrior for a lot of years. We are going to be looking at that risk equation every day.

Mr. LARSEN OF WASHINGTON. And on that point, of the number of Prowler, Navy Prowler squadrons, how many of those are currently deployed in the Middle East theater now?

Admiral FALLON. I don't think there are many left. I think somebody told me there are two or three squadrons left at Whidbey Island, but you have seven forward deployed with the airwings on the carriers. The Marines have the bulk of their assets forward deployed and then we have several expeditionary squadrons. I think there are only two and maybe three left at Whidbey.

Mr. LARSEN OF WASHINGTON. I think so. So they will be working very hard in the event of a conflict?

Admiral FALLON. Actually, Mayor Cohen from Whidbey Island came by to see me last week and wanted to let us know that they were supporting our efforts, men and women, 100 percent, and that she took note of the fact the streets were kind of deserted back there.

Mr. LARSEN OF WASHINGTON. Yes, they are. I want to follow up, and again for Admiral, the Lincoln, you know, is homeported in

Everett, Washington, and you note in your testimony that when it comes back, it probably will have been deployed for nine months plus. And I think, at least in my eyes, the Lincoln is sort of the poster child for the maintenance schedule slippage and the poster child for the impact on families. I will say all the families understand, they appreciate, and they are looking forward to their husbands and wives coming home. Can you comment on—in your written testimony, you talk about what the Navy is thinking about with regard to dealings with maintenance schedules and with training; but you didn't go into too much detail in your verbal testimony. Can you give us some idea about that?

Admiral FALLON. Yes, sir. First, let me say that this subject of the Lincoln and her schedule is a high interest item in my household since I have a son that is in a F-14 squadron on that ship. We don't know exactly when they are going to come back. We are going to have to see how things work here. But when she is released, the plan is to bring her back as fast as we can, put her in the shipyard for this deferred availability. The planners are already working on it. We think we have a pretty good idea what needs to be done. There have been some adjustments to the work force up at Puget Sound to accommodate what we know is going to be a late entry. We know there are some money adjustments we are going to have to make because this will now carry over into another fiscal year. But the idea is to get on it as quickly as we can, get the necessary work done, and be able to spin her out because we don't know when we are going to need her again for a surge. But there is going to be a changeout in airwings on that ship. Part of this availability will be to bring her up to speed so she can accommodate the Super Hornets and some other modifications, but that is the plan, and we just need to find out when she gets released from the current contingency and then we will be better able to suitcase that.

Mr. LARSEN OF WASHINGTON. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. McHugh.

Mr. MCHUGH. Thank you, Mr. Chairman. Gentlemen, thank you for being here. We are now going on 11 years I have had the distinct honor to serve on this subcommittee; and particularly during my time of the past several years as chairman of the subject committee, formerly Personnel, now Total Force, I have had a chance to be in a lot of the places that you gentlemen have spoken about today. I have been on the DMZ in Korea. I have been to Qatar and Bahrain, I have been out with the mobile inshore undersea warfare (MIUW) in the Persian Gulf, and been to the Uzbeki-Afghan border with the 10th Mountain Division prior to Operation Anaconda, and on and on and on, Bosnia, Kosovo. And I most of all want to tell you, as I look at the budget realities of the past 11 years, what amazingly incredibly effective work you, your command staff, but most importantly, your Army and your airmen and women, Marine Corps, our sailors have done on behalf of the American people. I frankly don't know how you have achieved it.

To my colleagues, I want to say I am heartened in one aspect that every hearing I have heard people, my colleagues, speak at this year, I have heard an understandable, I think very legitimate concern about the lack of resources, whether it be personnel, spare

parts, or other such vitally important materials, that all the services are experiencing. But I think it is important for all of us to remind ourselves, particularly now after the President's very moving, very heartfelt speech last night, that it is this committee and this House's, the House of Representatives' primary responsibility to provide the funding that these good gentlemen need to do the very important and ever growing work that we have asked them to do.

Last year I was very proud of this committee and particularly its leadership, the chairman and others, when my subcommittee called for an increase in end strength. We weren't able to sustain that. And I would say as I have listened to these good folks and obviously as individuals in the military, they carry forward with the orders they are given. The fact of the matter—the challenge still is there. I mean, you heard General Keane, for example, say where we are, 7,000 in Afghanistan. If you assume a three to one rate, one soldier, an airman, Marine, sailor in, one just leaving and another preparing to arrive, and look at the deployment in Bosnia and Kosovo and the Sinai and Colombia, the Philippines, 37,000 in Korea, what are we going to need over the long term in Iraq? Two divisions? I think that is low, so that is six divisions. We have only got 10 in the United States Army, for God's sake. Prior to the Berlin Wall falling, we had one million active duty days annually from the total Guard and Reserve. It is 13 million active duty days today. During the Gulf War, it was 39 million active duty days. But 13 million has been the sustained average.

How can we possibly expect these good folks to do what we are asking them to do with the resources we have been providing them? And I know I am on my high horse here and I haven't asked a question, but I didn't want to pass up the opportunity to just remind this great subcommittee and the committee on which we all work that this is our responsibility, and no matter what the distractions and the challenges may be we have got to do our job here. So I am looking forward to working with our colleagues.

And just so I don't pass my time without asking a question, General FOGLESONG, you said that your cannibalization rates are down. Can you tell me what they are down to?

General FOGLESONG. They are down from 12 to 13 percent down to 10 to 11 percent, but that is an aggregate number and it really depends on the specific airframe. So while I would like to award ourselves a Meritorious Service Medal here for them going down, we would clearly like to see them go down more. So we have made progress and we are excited about that. But lower numbers would be better for us. There is nothing more discouraging to an airman to have to go out and take a part off of an airplane and put it onto another airplane.

Mr. MCHUGH. And I assume—pardon me for interrupting the gentleman. I assume the reason it hasn't gone down more is not because your good folks have been derelict in your duty; you just haven't had the money to do it. Is that true?

General FOGLESONG. I am sorry?

Mr. MCHUGH. You just have not had the money to reduce that cannibalization rate further, is that true?

General FOGLESONG. In part and in part because our airplanes are getting older and are breaking more often than we anticipated.

Mr. MCHUGH. And we are not buying new airplanes because we haven't given you the money to accelerate your acquisition programs?

General FOGLESONG. Yes, sir.

Mr. MCHUGH. Is that true?

Admiral Fallon, are you aware that the United States Navy will be under the budget submission by the Administration, below the level of end strength set by law last year?

Admiral FALLON. Yes, sir. By the budget, but as I mentioned earlier, we are about 9,000 above right now. So we are going to have to balance the reality of what we need today with what we had planned to do back a year or so ago when we—

Mr. MCHUGH. Not just by the budget, Admiral, by the authorization bill as well. And my point is not to make an outlaw of you, believe me, sir. I know you are dealing with a number that you were given. My point again is to suggest to the colleagues we have got a real challenge here. Most of us, both sides of the aisle in this committee and subcommittee, have supported this President and I know all of us will support the troops. Well, if there is ever a time to put our money where our mouths is, this is it. And gentlemen, again I thank you for being here and I appreciate your forbearance as I rattled on here, but I happen to think that is pretty important stuff. God bless you all and your troops in the days ahead.

Mr. HEFLEY. Mr. Jones.

Mr. JONES. Mr. Chairman, thank you very much. And to each of the gentlemen, thank you for your service to our Nation. Thank you for your leadership for the military as well as our Nation. I would like very quickly to say that in the line of questioning of Mr. McHugh and Mr. Taylor, that I sincerely agree that we need to, in time, to really evaluate what we need to defend the national security of the American people as it relates to active duty.

Very quickly, Mr. Chairman, two weeks ago on a Saturday I had the pleasure of speaking to the Navy and Marine Reserve unit in Raleigh, North Carolina, and probably not the opportunity I had to speak, as much to stay for about 30 minutes afterwards and to talk to each one that had a reason to come up and talk with me. And my heart really went out because they want to serve this Nation. They are willing to die for this Nation. But truthfully, their lives over the last couple of years have really been somewhat in turmoil because of the fact that we as a nation are beginning to call more and more on our Reserves and our National Guard. So I am glad to hear some of your responses to Mr. Taylor and to a lesser degree to Mr. McHugh.

What I want to touch on very briefly is that I really appreciate, General Keane, you and Admiral Fallon, your comments about the depots, the civilian work force and how important they are; and, as General Nyland knows, we have a depot system in my district at Cherry Point that I will always remember Commandant Krulak saying that if you want to ensure the 9/11 force of this Nation, then we have got to have the depot systems and they have got to be there for us. You said, General Keane, when they are called upon

to provide the service that we can continue to fight and defend this Nation.

Let me start, if I might, talking about the depot maintenance funding. If my information is correct from my staff, the Air Force is facing a \$516 million unfunded depot maintenance requirement and the Navy accounts have an unfunded requirement of \$739 million. I actually believe that the chairman and the ranking member touched on this as I was coming in. My question would be, would you inform the committee at the specific levels and nature of shortfalls, excuse me, in your depot maintenance and working capital accounts?

General KEANE. Mr. Congressman, this year we funded our depot maintenance at close to 73 percent and it is—dollarwise it is \$1.89 billion. Last year we funded it at 1.19 billion, so we have obviously got \$800 million more in there. We also obviously have a shortage against requirements. We are meeting about 73 percent of what we believe our stated requirements are. For us it is an affordability issue of trying to balance all of these readiness accounts, and with obviously taking some risk there, but we think it is acceptable that we wouldn't have it at that level.

Mr. JONES. And Admiral.

Admiral FALLON. Mr. Congressman, in aviation depot the number is actually up in the budget for 2004 by a couple of hundred million from the previous year's submission. And, of course, we are going to have to recalibrate after—when we pull back off of this surge. In the ship depot maintenance we are at about \$3.6 billion in the budget this year, and frankly had taken a couple of—had gotten a couple of comments about the fact that it was essentially level and in some regard down a little bit. But I have to tell you that if you look back at what has gone on the last two years, we have been able to make substantial inroads into our backlog of maintenance. And I think that the facts pretty much speak to themselves today that we have been able to deploy more than two-thirds of our fleet simultaneously. That would have never happened if, in fact, we hadn't been in pretty darn good shape maintenance wise.

So a couple of factors here that are in play: One, substantial investments in the last couple of years to get us to a level that we may not be at 100 percent, but this is kind of like my little 22-year-old car that I keep in the garage and tinker with. I guarantee you I can find something to spend money on every year if I keep looking hard enough. But frankly, I think we are in much better shape than we were. May not be perfect but we are making progress. We also have taken and are taking out of service some of those older ships that require more maintenance, and that has been a suppressant on keeping the requirement down. So we are obviously trying to balance. The CNO made a commitment this year, after a couple of years of consistent increases in readiness, we put over \$6 billion additional readiness money in the last two years' budgets. But we wanted to move some of the available resources to the recapitalization in the 2004 budget. That is what we are doing. So we are increasing the number of new ships and aircraft that we are buying. We believe that we have, prior to the surge here, an adequate fund-

ing for both ship and aircraft depot maintenance; and, of course, now it remains to be seen after the surge where we end up.

General FOGLESONG. We will fund 79 percent this year for our depot maintenance, and that is down from about 92 percent of the requirement last year. We are taking some risk doing that. And in fact we are—we have made that our number one unfunded requirement this year, our depot maintenance requirements that is in for—two reasons that we are down. One is because we too have benefitted from reasonably good funding over the last number of years. We have been able to not get ahead of the curve so much as to catch up with where we would like to have been; and, two, we are trying to better assess what our strategy should be for when we put our aircraft in the depot and it has a little bit to do with what I mentioned earlier. We are flying our airplanes on longer missions now, rather than the short missions; and to a degree, that impacts how often things break in the airplanes. And that is going to be the way I think we are going to continue to fly over the next several years, and especially this year and next year, which drives the schedule in the depot. But we do remain concerned about that unfunded requirement, Mr. Congressman.

Mr. JONES. Admiral, let me ask you, if the Army is at a 73 percent level and the Air Force 79, where would you say the Navy is percentage-wise?

Admiral FALLON. The percentage, if you balance the different platforms and communities, is in the high 90s. I believe it is about 96.5 percent across the board, and there are some trade-offs there. The nuclear work and the submarines and aircraft carriers is a little bit higher, about 98 percent on average; and the rest of the non-nuclear platform is down around a little under 92 percent.

Mr. JONES. Mr. Chairman, can I make one statement before I close? I see my time is up. I really appreciate many of us on this committee, particularly this committee, that are very active with the Depot Caucus that is chaired by Congressman Ortiz from Texas; and it seems like each and every year, whether it be the Clinton Administration or now the Bush Administration, we always have ongoing issues of trying to find that balance between the private sector and the public sector. And I have been very interested and concerned also with your comments about the aging work force; and if we are going to maintain the depot system so that it can be part of the defense of this Nation, and that is really what they are, then we have got to, Mr. Chairman, as we go through this Congressional year, we have got to ensure that there is a balanced playing field, if you will, because too many times the morale of those at the depot feel when it comes to these bidding processes that they are at a disadvantage. And so I will close with that. But I hope that we will, and this is part of a very important part of the readiness, as all four of you gentlemen have said that and we know that as a Congress. And thank you for your comments, your service to this Nation and God bless you and God bless our men and women in uniform. Thank you.

Mr. HEFLEY. Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. Mr. Ortiz, members of the committee, and thank you, gentlemen, for your testimony. After hearing all of them, I feel that our country is ready

for any confrontations. I want to, in particular, thank the Air Force for placing their B-1s and B-52 bombers on Guam, to the Navy for their nuclear subs, to the Marines for carrying out many training missions on our island, and of course to the Army. Although you do not have a presence in the Territory of Guam, you do have a presence in the surrounding islands.

My question is directed to Admiral Fallon. The Navy is doing an outstanding job of bringing force to bear in the Middle East; and I assume that once operations underway are successfully concluded, there will be a large surge in the ship repair workload. Could you explain to the committee what plans the Navy has in place to address this surge in repair work, having reduced shipyard depot maintenance accounts by \$600 million in fiscal year 2004, and could you also inform the committee whether the Navy plans to continue the repair of forward deployed Military Sealift Command (MSC) ships in foreign ports rather than employing American labor?

For example, I understand the San Diego homeported USNS *YUKON*, that just left Guam, Admiral, is coming up for repair and that the Navy has asked for bids from Singapore, Korea and Japan; and no doubt she will go to Singapore from what I have heard. Admiral, unemployment on Guam, and these are U.S. citizens, is at 20 percent. Singapore has a thriving economy. What happened to Buy America?

Admiral FALLON. Ma'am, regarding the big picture of repairs and reconstitution, the plan is to attempt to execute as we roll to the future those availabilities that have been planned and scheduled as we can release the units from their combat duty today. Do we have this thing figured out? Of course not. We are just going to have to see and do the best job we can. We have made some adjustments. For example, one of your colleagues highlighted the *ABRAHAM LINCOLN* was supposed to have been back several months ago and enter shipyard period. It is not going to make it. Obviously, it will be late. Some of those funds that have been earmarked we have been able to apply to some other emerging work; and we will continue to do that to try to make best use of the resources regarding the *YUKON*, and, in particular, I don't have a specific answer. I don't know that we have that plan defined yet.

I will make a couple of comments. One, the laws as they are currently written require us to do our maintenance in the United States or Guam, specifically written into law. However, there are some other factors that we would like the Congress to consider. One is that the persistent surge requirements for our forces today are putting a tremendous demand on those assets. We have a couple of initiatives that in the big scheme of things we are trying to leverage our force to be more efficient and more responsible for the taxpayers dollars. And so one of these initiatives I mentioned in my opening statement was the "Sea Swap" where we are taking, running a pilot with a couple of ships to deploy them—these are west coast ships in the initial endeavor here—deploy them to the Indian Ocean and instead of bringing them back—and it takes almost a month to do each of the transits back and forth—we keep them in the western Pacific, swap the crews out and keep them out there for 12 or 18 months instead of the standard six. We are certain

that there are going to have to be some maintenance to keep these ships forward deployed. We would like to have a little bit of flexibility in those trade-offs. We don't envision major dry docking repairs unless there is some problem that has manifested itself. But we would like to have some help here.

Another reality is that with the limited number of ships, particularly in the combat logistics force of which *YUKON* is a member, as we continue to have requirements to support the fleet forward deployed, it may be that we would request in some instances to do some repair, to preclude having to lose the availability of that ship for some months to transit all the way back to the States. I think in Guam you are pretty well positioned now with the forward deployed status in the Pacific to reap some benefits of that; and so we will—if you will work with us, we will continue to work and see if we can come up with the best answer.

Ms. BORDALLO. Thank you, Admiral. That is what I wanted to hear, so there can be, you know, some interest in this area, because we really do; and I will point out that the ship repair facility under the BRAC closures, it closed. It is under a private operator now. And as I said, there are 200 people employed there, U.S. citizens, and I know we can't match wages in Korea and Singapore and the other Asian countries. We are mandated by federal regulations. So I would appreciate anything you can do to give us that workload.

Admiral FALLON. And I think the realities are, for example, moving the submarines recently forward to Guam, I would expect that there is going to be some activity that you will see.

Ms. BORDALLO. Thank you very much and I appreciate everything you are doing and, like I said, I am always concerned; I represent Americans that are way out in the Pacific area. We are very vulnerable in case of any problems, especially North Korea, so I appreciate what the military is doing to protect and safeguard our people, many, and I thank you.

Mr. HEFLEY. We do have to close this hearing at 4:00. We have four more people who would like to ask questions. I would like to ask those of you who want to ask questions to keep your questions brief and the answers as brief as you possibly can. I hate to limit you, but we do have to close at four.

Mrs. Davis.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman. And a lot of my questions actually have been asked. I wanted to focus as well on the shipyard maintenance and I guess ask the question, as I think every one has suggested, if we know in fact that there is going to be a great deal of deferred maintenance, and we are assuming that that is going to be the case with so many forward deployed, then why wouldn't we be more specific or more realistic really in the 2004 budget when it comes to ship repair and depot maintenance budgets?

Admiral FALLON. Mrs. Davis, look at me. I will take that one as we do ships. When we put the 2004 budgets together, we didn't have this current surge on the horizon. Of course, you are always trying to second guess contingencies. But this was not apparent. The reality is that we have some and we were able to eat substantially into that backlog of deferred maintenance over these last two years, and that is why we were able to deploy the fleet in the con-

dition that it is right now. So as we look to the future, we are trying to anticipate those—there is a schedule laid out of which ships were planned to go for what availabilities. We would like to try and make as many of those as possible. We will have to make some decisions on deployments. We have made one with LINCOLN. We have opted to keep that battle group forward deployed for a pretty lengthy time.

Mrs. DAVIS OF CALIFORNIA. Are we just going to always be looking at large supplementals then? Is there a point at which we can get to so that—

Admiral FALLON. No, I think it was pretty clear to us that the Defense Department told us in pretty clear terms last year and the year before that we were to get off the supplemental kick. And we rogered up for that in spades. The challenge this year, of course, is we have got a global war of terror ongoing and now we have the surge to Iraq. I don't know how you budget for that. I wouldn't expect the Congress to just give us a gratuitous \$20 billion or something just to—

Mrs. DAVIS OF CALIFORNIA. But we have been asking those questions.

Admiral FALLON. I would expect that you will probably get a package pretty soon with that. But anyway, back to the ship business, we have made substantial progress and we are really happy with where we have come in the last couple of years. We know we are going to have some shuffling to do as these ships come back and we will attempt to—we will—we have given and the Defense I am sure will pass over to you those best estimates that we have to do the work we really need to do. And you know, the CNO is committed to doing 100 percent of the requirement. Defining 100 percent is sometimes the challenge, but in the days in the past where we took a percentage of a percentage, you never knew where you were. We are trying to nail this down, and we will give you the best number we can.

Mrs. DAVIS OF CALIFORNIA. Okay. Thank you. I appreciate that. I just wanted to thank you all as well for being here. Thank you for your service.

Mr. HEFLEY. Mr. Abercrombie.

Mr. ABERCROMBIE. Thank you, Mr. Chairman. Mr. Chairman, it has been pointed out this subcommittee is the initial stopping place for readiness for authorization. And gentlemen, on this budget, in some respects I am a little disconcerted by this presentation today because Senator Byrd has said maybe we are sleepwalking through this time. We almost seem to be in brain lock here. This budget, if I understand it correctly, is totally and completely inadequate with respect to the likely spending that will take place in the next 12 months of the fiscal year that is being contemplated, is that correct?

General KEANE. In terms of what we are executing in the war on terrorism?

Mr. ABERCROMBIE. Yes.

General KEANE. In 2003 and—

Mr. ABERCROMBIE. Yes, and the surge in Iraq. This is totally inadequate to what is likely to be spent, is that correct?

General KEANE. Well, the budget doesn't have anything in there that reflects for the war.

Mr. ABERCROMBIE. Not a dime. Right. Now I recorded in my review of your budget submissions, all four services, 15 instances of cuts from 2003 to 2004. In Guard, Reserves, operating forces, mobilization, recruiting and training and administration and support, 15 instances of cuts. So not only do we have to deal with the surge, not only do we have to deal with the terrorism aspect, including whether or not we are going to repair ships in foreign ports, which to me is astounding given the fact that we are supposedly in a war against terrorism on a worldwide basis, are we or are we not anticipating the necessity of a supplemental budget or budgets that will be in the 10s of billions of dollars just to sustain what you are already operating under?

I am going to use you, General Keane, as an example, not because I am singling you out, but because of the clarity of your testimony. If I remember correctly, you said you are already into, and I expect the other services are into the same situation, the third and fourth quarter of this year in terms of your operating expenditures, isn't that correct?

General KEANE. That is correct.

Mr. ABERCROMBIE. And the other services I assume are somewhat similar, that you are already moving on into perhaps the third or fourth quarter of this year in terms of the spending. And so whatever we have by way of the supplemental budget, the question I have at this point is, will that also include, to the best of your knowledge, making up for the expenditures that we are already committed; in other words, we not only have to deal with whatever surge is involved with 2004, but we are going to have to deal with making up the money we have already spent by March 18?

General KEANE. That is correct. The omnibus bill that was passed provided us some immediate relief into 2003. But certainly, you know, speaking for my service, I mean clearly we have got billions of dollars of sunk costs for 2003 in the global war on terror. And obviously that is the intent of the supplemental. That money is gone. It is spent and we obviously have other costs that we are incurring right now with our preparations for war in Iraq. The problem we have is we don't know what this supplemental bill number is. We are not hiding from you. We just don't know. We have heard ranges but we just don't know what that number is.

Mr. ABERCROMBIE. What I want to make clear is—I understand that. But all of you have the responsibility for making that presentation to us at some point.

General KEANE. That is correct.

Mr. ABERCROMBIE. I hope in the near future. But I don't see any heads shaking opposite of what you are saying, so I assume in the other three services you are also going to have to put forward and whatever supplemental comes forward, a makeup or a fill-in, a backfill if you will, to handle 2003?

General FOGLESONG. We are led to believe that the money that we have cash flowed up to this point will be captured in the supplemental. We all have accounting processes and have been told—

Mr. ABERCROMBIE. Okay. That is fine, just so it is clear that that is what we are going to deal with.

Admiral FALLON. And, Congressman, we are talking about a 2003 supplemental to take care of the cash flows that we are pulling forwards for this year. In those estimates that we are submitting through the Defense Department, we are attempting to catalog those requirements, not just what we have already spent in terms of jet fuel burned out of tailpipes and stuff, but those wear and tear items that we anticipate we are going to have to replace.

Mr. ABERCROMBIE. Well, I would regret to say, the reason that I bring this up, I regret to say that even if you could account for, in terms of the kinds of efficiencies that you have all stated during your testimony, for the 15 cuts that I was talking about, the 2004, and if I accepted that or the committee accepted that at face value, and no reason not to, that all of the things you have tried to deal with, including some of what General Keane I think would agree are some of the ill-considered impositions on the armed services that the Congress has helped to put forward in terms of privatization, contracting out, that I think all of you know I oppose, that those savings are going to be wiped out. They may already be wiped out as a result of what has taken place.

Now, that takes me to my last point here, because this is something—oh, you are right. I am sorry. You only have until 4:00. But, Mr. Chairman, I would like then your permission to ask questions about the Guard and Reserve and the costs associated with that because, Mr. Chairman, we are not going to be able to sustain, despite the professionalism and dedication of the Guard and Reserves, the present end strength in Guard and Reserves, and have these gentlemen be able to carry out their mission.

Thank you very much.

Mr. HEFLEY. Mr. Rodriguez.

Mr. RODRIGUEZ. Let me—I think a lot of Congressmen asked about end strength and let me ask you, and I will share some concerns that I have. Our Secretary of Defense talked about a 23,000 cut in the military about 30 days prior to this whole start of Iraq, which really concerned us. March 6, you know, that is almost a week and a half ago, he talked about maybe getting rid of the troops in Korea. We have talked about a BRAC process that we are on. And there are some concerns about the whole issue that, you know, we had half a million troops in the Gulf War and that there was some talk about only 160 initially, we are at 200, although some people felt that we needed a lot more. You know, it really bothers me also that we have a lot of our reservists even prior to 9/11 that were in active duty, almost 80,000 of them reservists and Guard, you know, active duty. And so I am concerned that they may get burned out. I am concerned about the dialogue, you know, up to just a week ago about Korea and at the same time we are calling them the Evil Empire. How are we handling that situation?

But more important is I am concerned about the situation; I would rather have overwhelming force when we look at getting into Iraq and have more than what we need than not have sufficient. And I am also concerned that a lot of the dialogue that we are getting it seems like, it is the same story now. Everybody is on the same page. And you know, and I don't know, that bothers me a

great deal that we really need to look at additional troops and manpower. I know that there is—we have been told that there are ships out there that are still out there with insufficient staff and not staffed the way they should be. And you tell me that is not the case. Okay, you tell me that that is not case.

Admiral FALLON. That is not the case, sir. Our manning of our deployed forces today is about 99 percent across the board. There may be some individual skill sets areas. I think that is kind of reality of life. We may need an individual here or there, but the overall numbers are fantastic. And again, they are that way because of the great work of the Congress.

Mr. RODRIGUEZ. Okay. Let me just share something with you from a political angle. You know, the politician who tells you that he is unbeatable is the one who gets beat. And I look at politicians as they engage in election to election, grow and develop, and I kind of see the generals doing the same. And if you assume that Congressman Reyes ran against me, for example, or if he had decided to run against me and if I had beat him and I assume that the next encounter is going to be the same, that is when I get beat. And I know that generals also grow from their experiences and from their engagements. And when you—and when a general is beaten is when they become arrogant just like a politician who becomes arrogant. And, I don't know; I get that feeling that, and I hope I am wrong, you know. And I really feel because we really need to make sure that we have the sufficient troops that are needed and the manpower that is needed there in order to make some things happen.

General KEANE. Can I respond to that, Mr. Congressman?

Mr. RODRIGUEZ. Yes, please.

General KEANE. Well, let me reassure you that the combatant commanders who have—and I am sure you are referring to this potential fight in Iraq—who have organized our plans and put together the troop list for what is about to take place if the President asks us to do it, they are thoughtful people and they don't take lightly risking the lives of American men and women.

If we fight this war, it will be very different from the war we fought 12 years ago. Our technology has changed, our capacity to fight has improved rather significantly in these 12 years. We don't match ourselves an airplane against an airplane or a ship against a ship or a soldier against a soldier in terms of numbers; we match it in terms of combat effects. And we can do many things simultaneous today that we were not capable of doing 12 years ago. It is the synergism that comes from that simultaneity that can have a rather dramatic effect on an opponent.

The other thing is, we never, ever take our opponents lightly. We do not do that. We look at our opponents and understand who they are. And all leaders who are dealing in a situation like that worst-case situation and start from there, worst-case it in terms of what the enemy could do, and look at that scenario and what that means for us—that is the start point—and then make the adjustments that are made based on recent intel updates and the like.

So this force that stands ready in the Gulf today is ready to fight. It is highly skilled, it is exceptionally well led, and it has thought-

ful plans that will drive that force forward. And it will—it will act differently than what it did 12 years ago.

I don't want to get into the details of that for all the obvious reasons.

Mr. RODRIGUEZ. And I wouldn't expect you to do that. I am just looking at it from the perspective of making sure, because I don't feel comfortable when I hear comments—and I will be very blunt—from the Secretary of Defense regarding getting our troops out of Korea, you know, cutting our troops 23,000 prior to this situation. And even question—I even question the whole BRAC process, to this day. And so—and I would hope, and I know that you would come to us as quickly as possible if you find a situation where we really need to beef up.

We need to be there for our troops. We need to be there to make it happen. And I know that the only time that a politician gets beat is when he becomes arrogant, and so—and it can happen to anyone. And so I don't want for it to happen to us, that we underestimate, because I also know how when someone is—when you put someone against the wall, it is a lot—a big difference from when you deal with them outside in a different setting. And we are going to put him against the wall.

So it is—and we have already encountered him once, and we can make a serious mistake by underestimating what he can and cannot do, what he is capable of doing.

But I would rather have 200,000 more troops out there, double what we got now, than what we have at this point in time just based on the principle—in terms of what we had in the Gulf War, you know, close to half a million.

So, thank you.

Mr. HEFLEY. Well, thank you very much, gentlemen. We are going to have to recess the committee. But I appreciate so much your being here today. I mean, I know you have got a lot of other things that you have got your minds on today, and for spending your time with us, we really appreciate it, and it has been very, very helpful.

The committee will stand in recess momentarily.

Mr. ABERCROMBIE. Mr. Chairman, can we submit some questions then——

Mr. HEFLEY. Certainly.

Mr. ABERCROMBIE [continuing]. That we wouldn't have time for today?

Mr. HEFLEY. Certainly.

Mr. ABERCROMBIE. Thank you.

Mr. HEFLEY. Thank you very much. The committee stands in recess. We will reconvene momentarily.

[Whereupon, at 4:03 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

A P P E N D I X

MARCH 18, 2003

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 18, 2003

RECORD VERSION

STATEMENT BY
GENERAL JOHN M. KEANE
VICE CHIEF OF STAFF
UNITED STATES ARMY

BEFORE THE SUBCOMMITTEE ON MILITARY READINESS
COMMITTEE ON ARMED SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

FIRST SESSION, 108TH CONGRESS

ON READINESS

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**STATEMENT BY
GENERAL JOHN M. KEANE
VICE CHIEF OF STAFF
UNITED STATES ARMY**

Mr. Chairman and members of the committee, thank you for the opportunity to testify before you on the current and future readiness of the United States Army. On behalf of every Soldier, civilian, and Army family member I would first like to thank this committee, and the Congress as a whole, for your support of the fiscal year 2003 budget.

With your help the Army received a 4.1 percent average pay increase for our soldiers and increased housing allowances to reduce out-of-pocket expenses from 11.3 percent to 7.5 percent. The fiscal year 2003 budget also funds significant Army initiatives to retain and recruit quality Soldiers, provides for upgraded single-soldier barracks, and expands many programs that improve the quality of life for our Soldiers and their families.

We also appreciate your continued support of our Army's Transformation goals. The 2003 budget fully funds our third Stryker Brigade Combat Team (SBCT), provides an additional \$105 million for the Army's Future Combat System (FCS), \$173 million for the development of FCS Non-Line of Sight Cannon, and also funds \$874 million for the Comanche helicopter system.

Across the board, the fiscal year 2003 budget sends a strong message of Congressional support for our soldiers, civilians, and families – and clearly indicates your resolve to help sustain the readiness of our Army as we Transform for the future.

THE ARMY AT WAR

Today our Army is engaged throughout the world – fighting the Global War on Terrorism, providing peace and stability to regions

throughout the world, and preparing for a potential war in Iraq. Our simultaneous commitment to these operations, and the successes we have achieved, clearly indicate our military capability and state of readiness.

In the weeks immediately following the attacks of September 11, Special Operations Forces skillfully infiltrated Afghanistan and leveraged the capabilities of long-range Joint fires to enable the Northern Alliance to rapidly defeat the Taliban. At home, our Active and Reserve Component Soldiers quickly moved to secure our airports, waterways, harbors, nuclear plants, dams, power generation facilities, and other critical infrastructure throughout the United States. By January 2002, U.S. and allied conventional forces joined our Special Operations Forces and demonstrated courage and resolve under the most challenging conditions. During the 12 days of Operation Anaconda, our Soldiers often fought outnumbered against a tough, determined enemy and proved once again that they are the best-trained Soldiers in the world.

Without question, the Army is trained and ready to defend the American people – to fight when required. At the same time, we remain committed to numerous smaller scale contingencies – providing peace and stability to regions throughout the world that would otherwise be in chaos and unable to support viable economies.

The success of these operations, and our Soldiers' performance throughout the war, present the best evidence I can offer on the Army's readiness to fulfill its non-negotiable contract with America – to fight and win the Nation's wars. With the support of Congress and the Administration, the Army will continue to fulfill its role in the war on terrorism, maintain our near-term readiness, and rapidly transform to fight and win our future conflicts.

TRAINING

More than anything else, our standing as the greatest Army in the world is due to our Soldiers' skill – it is our training that makes the difference. This state of readiness, however, does not just happen. It requires realistic, multi-echelon training under battlefield-like conditions to meld soldiers and equipment into the best fighting force in the world. The recent performance of our Soldiers reinforces the Army's position that assuming risk in Operating Tempo (OPTEMPO) is unacceptable. Therefore, OPTEMPO is again a top priority that is reflected in the fiscal year 2004 budget.

OPTEMPO

The fiscal year 2004 budget fully supports a ground OPTEMPO program of 913 M1 Abrams tank miles (live and virtual). The flying hour program provides 13.1 flight hours per aircrew per month, which represents our best historical rate of execution. We have funded 25 brigade rotations through our Combat Training Centers to provide commanders with the resources they need to execute tough, demanding, combined-arms training that will keep their forces trained and ready. The Battle Command Training Program will conduct three Corps Warfighter exercises and train seven division command and staff groups.

ENVIRONMENTAL ENCROACHMENT – EFFECT ON READINESS

Maneuver land and live-fire ranges are an essential element of our training process – without them, our Soldiers cannot develop and maintain the confidence and skill they demonstrate today. We must retain those resources that allow our forces to maintain the level of readiness the American people have come to expect, and deserve.

The Fiscal Year 2004 Defense Department Readiness and Range Preservation Initiative (RRPI) proposals address several of the Army's concerns regarding environmental encroachment to include training restrictions that stem from the management of threatened and endangered species and the expanded application of environmental regulations to the use of military munitions. The proposed RRPI provisions do not seek to eliminate our responsibility to protect the natural resources under our care. Rather, they seek to clarify and affirm existing policies and ensure that military ranges – set aside to allow live-fire and maneuver training and contain potential impacts – remain available to train Soldiers for combat.

The Army is committed to its responsibility as an environmental steward for the 16.5 million acres in our care. However, we are equally committed to another precious resource that America entrusts to us – her sons and daughters. We are obligated to provide our soldiers with the most realistic training scenarios possible to prepare them for the rigors of war. The Army will never abandon its environmental responsibilities, but we must have land on which to train.

Unless we can resolve several issues at our key training areas, we face the very real possibility that we will lose some of our critical training areas or, at a minimum, we will be forced to deny our soldiers the opportunity to participate in the number and type of exercises required to learn and retain perishable skills. Your support of this legislation will help provide the flexibility needed to conduct realistic training and protect the land and resources America entrusts to us.

NATIONAL SECURITY EXEMPTIONS

The existence of National Security Exemptions is frequently used as an argument against the legislative clarifications proposed in DoD's RRPI initiative. Although some environmental statutes do allow for

national security exemptions, they were never intended as a permanent solution to recurring requirements. Such exemptions are generally reserved for approval at the Presidential level, apply only to very specific activities at individual sites, and remain in effect for only one year. The readiness activities we are concerned with are not "one-time" events. They are part of the day-to-day training regimen of our soldiers and it is simply unrealistic to expect the military to request exemptions for training that must occur on a regular basis. Rather, we should resolve the basic issue through the clarification of Congress' original legislative intent.

STRATEGIC READINESS REPORTING

The Army's Strategic Readiness System was implemented in October 2002 as a comprehensive strategic management and readiness assessment tool. It provides Army leadership with accurate, objective, predictive, and actionable readiness information to dramatically enhance strategic resource management. For the first time we have an Army enterprise management system that integrates readiness information from both the Active and Reserve Components – enabling the Army to improve support to Combatant Commanders, invest in Soldiers and their families, identify and adopt sound business practices, and Transform the Army to the Objective Force. This reporting system markedly improves how we measure readiness by gathering timely information with precision and expands the scope of the data considered. We are further developing this system to leverage leading indicators and predict trends – avoiding issues that affect readiness before they become problems.

PEOPLE READINESS

Army readiness is directly linked to our ability to recruit and retain quality Soldiers. Therefore, we are committed to those efforts that improve our Soldiers' quality of life and provide for a suitable standard of living. The fiscal year 2004 budget funds an average pay raise of 4.1

percent and provides for targeted pay increases for specific grades and years of service. The budget also provides \$300 million to increase housing allowances and reduces Soldiers' out-of-pocket expenses to 3.5 percent. This level of funding puts the Army on track for eliminating average out-of-pocket costs entirely by fiscal year 2005 for those Soldiers and families living on the economy. With these increases in pay and benefits, the Army is renewing its commitment to our Soldiers and their families and providing a stimulus to retain the expertise that is fundamental to our readiness.

RECRUITING AND RETENTION

In 1999, the Army missed its recruiting goals by approximately 6,300 inductees in the Active Component and by some 10,000 in the Reserve Component. In fiscal year 2002, all three components of the Army achieved their overall mission for the third consecutive year. The Active Component exceeded its 79,500 enlisted accession target and is poised to make the fiscal year 2003 accession target of 73,800. The Army also exceeded its aggregate fiscal year 2002 retention objective of 56,800 Soldiers in all three categories.

The Army Reserve's recruiting force is well structured to meet fiscal year 2004 challenges and continues to maintain a strong Selected Reserve strength posture at 205,484 (as of January 17, 2003) – over 100 percent of the fiscal year 2003 end strength objective. Overcoming many recruiting and retention challenges in fiscal year 2002, the Army National Guard exceeded its end strength mission and reenlistment objectives.

MANNING

In fiscal year 2000, we implemented a strategy to man units at 100 percent of authorized strength. Starting with divisional combat units, the program expanded in fiscal year 2001 and fiscal year 2002 to include early

deploying units. In fiscal year 2002, we maintained our manning goals and continued to fill our Divisions, Armored Cavalry Regiments, and selected Early Deploying Units to 100 percent in the aggregate, with a 93 to 95 percent skill and grade-band match. We remain on a glide path to accomplish our long-term goal of filling all Army warfighting units to 100 percent of authorized strength.

QUALITY OF LIFE

The Army established the Barracks Upgrade Program in the late 1990's to improve single Soldiers' housing conditions. Through 2002, we have upgraded, or funded-for-upgrade, 70 percent of our permanent party barracks to Soldier-Suites that consist of two single bedrooms with a shared bath and common area. The Army will continue the upgrade program until all permanent party barracks achieve this standard – we remain firmly committed to completing the Barracks Upgrade Program by 2010.

For our families, the Army – with the strong support of Congress – established the Residential Communities Initiative. This program leverages commercial expertise and private capital to perform a non-core function for the Army – family-housing management. The program provides greater value to the Army by attracting more than \$700 million in private capital to alleviate housing shortages and improve the condition of our existing housing more rapidly than government resources would otherwise allow. The Army's privatization program began with four pilot projects and will expand to 18 active projects by the end of fiscal year 2003. Pending Office of the Secretary of Defense (OSD) and Congressional approval, 28 projects are planned for the end of fiscal year 2006. By the end of 2007, we will have the programs and projects in place to meet the OSD goal of eliminating inadequate family housing. We

will accomplish this goal through RCI and increased Army investment in family housing Military Constructions at non-privatized installations

INSTALLATION READINESS

Army installations are our Nation's power projection platforms and they provide critical training support to the Army and other members of the Joint team. Installations also provide our Soldiers, families, and civilians a place to live and work. Therefore, the quality of our infrastructure directly affects the readiness of the Army.

The Army has traditionally accepted substantial risk in infrastructure to maintain its current warfighting readiness. However, a decade of chronic under funding has left over 50 percent of our facilities and infrastructure in such poor condition that commanders rated them as "adversely affecting mission requirements." Over the past two years, with the help of the Administration and Congress, the Army began to rectify this situation with significant increases in funding and innovative business practices. These efforts have been dramatically successful as we continue to correct a problem that was a decade in the making. In a continuing effort to prevent future degradation of our facilities, the Army will fund facilities sustainment at 93 percent of the requirement in fiscal year 2004.

TRANSFORMATION OF INSTALLATION MANAGEMENT

In a significant paradigm shift from the way the Army historically managed its installations, the Secretary of the Army directed the reorganization of the Army's installation management structure. On October 1, 2002, the Army began to place its installations under the Installation Management Agency (IMA). IMA is a field-operating agency of the Assistant Chief of Staff for Installation Management. The intent is to streamline headquarters and resources, create more agile and responsive staffs, reduce layers of review and approval, and allow mission

commanders to focus on their core warfighting tasks. IMA will provide equitable, efficient, and effective management of Army installations worldwide to support readiness, improve infrastructure, and preserve the environment. This new management approach eliminates the migration of Base Operations funds to other operational accounts below the Headquarters Department of the Army level. It also enables the development of multi-functional installations to support evolving force structure and Army Transformation needs.

EQUIPMENT READINESS – RECAPITALIZATION & MODERNIZATION

Recapitalization is the cornerstone of the Army's strategy to sustain its warfighting capability throughout the fielding of the Objective Force. Therefore, we are committed to the recapitalization of two divisions in the Counter Attack Corps and Army Aviation modernization and restructuring. Our strategy is to selectively rebuild or upgrade systems that will remain in the inventory for the next 15 to 20 years and achieve an average fleet age of no more than half of a system's expected service life. These systems include the M1 Abrams tank, M2/M3 Bradley Fighting Vehicle, AH-64 Apache, UH-60 Black Hawk, and CH-47 Chinook. If sufficiently resourced, this investment in future readiness will sustain warfighting capabilities, reduce the cost of ownership, and extend the service life of systems until the Objective Force is fielded throughout the Army.

The Army's aviation modernization plan now in progress, will eliminate Vietnam-era aircraft from the force by 2004, lower operating and sustainment costs, and posture Army aviation for the arrival of the Objective Force. By fiscal year 2007, we will achieve a 23 percent reduction in our helicopter inventory (from 4,533 aircraft in fiscal year 2001 to 3,491 aircraft in fiscal year 2007).

Apache modernization is an integral part of the Army Aviation Transformation Plan. The AH-64D Longbow will enhance domination of

the maneuver battlespace and provide the ground commander with a versatile, long-range weapon system against a range of fixed and moving targets. The UH-60 Black Hawk continues to be the assault workhorse of Army Aviation, executing over 40 percent of the Army's annual flying hours. We are extending the life of the UH-60 while providing it with capabilities required by the future battlespace. Similarly, the Army is fully committed to the CH-47F Chinook program. Its heavy-lift capability is invaluable to transforming the Army. As we restructure and standardize attack and lift formations across the force, we will also adjust the stationing and alignment of Reserve Component aviation units to mitigate the near-term risk.

ARMY TRANSFORMATION IS OUR FUTURE READINESS

The strategic environment has changed and the Army must change with it. We must Transform to a more strategically responsive force that is dominant across the full spectrum of military operations. Fundamentally, we must change the way the Army fights and the way it deploys. With changes to doctrine, training, leader development, organization, materiel acquisition strategies, and soldier systems, the Army is taking a holistic approach to its Transformation. The result will be a different Army, not just a modernized version of the current Army.

Built around the FCS, the Army's Objective Force is the future Joint, Interagency, and Multi-national precision maneuver instrument for this Nation. Comprised of modular, scalable, flexible organizations for prompt and sustained land operations, it will be more lethal, more agile, and more rapidly deployable. In May of this year, we are confident that FCS Milestone B will transition the FCS program from Concept and Technology Development into Systems Development and Demonstration. The Army will begin fielding the Objective Force in this decade with the

first FCS combat maneuver force equipped in 2008 – Initial Operating Capability (IOC) for this unit is expected in 2010.

Stryker Brigade Combat Teams bridge a capabilities gap between our lethal, survivable, but slow-to-deploy heavy forces and our rapidly deployable light forces that lack the protection, lethality, and tactical mobility that we seek. In the spring of 2003, we will achieve IOC with the first SBCT at Fort Lewis, Washington. IOC for the remaining five SBCTs will occur each year thereafter through 2008. The Army has resourced six SBCTs in concert with the 1-4-2-1 defense construct and national security requirements. However, at this time, the Secretary of Defense has only authorized the procurement of the first four brigades pending the Army's plan for potential modifications to Stryker Brigades five and six. We intend to work with the Secretary of Defense and this Congress to assure that all six Stryker Brigades are fielded with the force structure and capabilities they need to possess.

CONCLUSION

For nearly 228 years, the Army has kept its covenant with the American people to fight and win our Nation's wars. In all that time, we have never failed them and we never will. Building and maintaining an Army is a shared responsibility between the Congress, the Administration, those of us in uniform, and the American people. With the help of Congress and the Administration, we will keep the Army ready to meet today's challenges and continue to make significant strides toward achieving the vision of a Transformed Army in this decade.

Thank you, Mr. Chairman and distinguished members of the committee for allowing me to appear before you today. I look forward to discussing these issues with you.

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HOUSE ARMED SERVICES COMMITTEE

STATEMENT OF

ADMIRAL WILLIAM J. FALLON, U.S. NAVY

VICE CHIEF OF NAVAL OPERATIONS

BEFORE THE

SUBCOMMITTEE ON MILITARY READINESS

OF THE

HOUSE ARMED SERVICES COMMITTEE

MARCH 18, 2003

NOT FOR PUBLICATION UNTIL
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HOUSE ARMED SERVICES COMMITTEE

Introduction

Chairman Hefley, Congressman Ortiz, and distinguished members of this subcommittee, I appreciate the opportunity to be with you today. It is a privilege to report to you on the status of the finest Navy in the world. Your generous support has been instrumental in our efforts to improve the combat readiness of our Navy. The results are evident in the strong forward deployed posture and high readiness of our people and units.

I'll begin my statement today by reviewing the past year, including our support of Operation *ENDURING FREEDOM* and Homeland Defense. Next, I'll address where we are today and how we got here, focusing on the Sailors, training, maintenance, platforms, and munitions which are the key enablers of our current high forward deployed state of readiness. I will then discuss the challenges we face in maintaining this readiness level and in reconstituting the fleet once the current crisis in Iraq comes to a close. Finally, I will outline how we will leverage technology and business practices within the Chief of Naval Operations' Sea Power 21 vision to position the Navy for future readiness.

This Time Last Year . . .

At this time last year, 103 Navy ships and 48,000 Sailors were deployed around the world supporting the Global War on Terrorism and other operational commitments. We were in the process of scaling back the Navy's participation as a joint and coalition partner in the campaign in Afghanistan. The Navy had surged to support the overall military effort, and the persistence, precision, and operational flexibility of our naval forces provided major contributions to the campaign. Three carrier battle groups, supported by Air Force tanker crews, provided continuous 24-hour tactical aircraft presence over 700 miles inland. Two amphibious ready groups fully supported Marines deployed deep into Afghanistan and Pakistan. Navy Special Forces (SEALs) provided key elements of the special operations effort on the ground while an aircraft carrier employed on short notice as an innovative Afloat Forward Staging Base (AFSB) hosted Army Special Forces units. Specially configured P-3 aircraft flew extensive missions overland providing direct reconnaissance support for forces on the ground. The Navy also participated in a host of operations intended to interdict terrorists and contraband material moving over the oceans. Meanwhile, our naval coastal patrol craft teamed with the Coast Guard for port security in support of Homeland Defense.

Nearly every ship in the Navy has deployed over the past year in support of combat operations, some twice. USS *CARL VINSON*, which was on station for the opening salvos in Afghanistan, deployed again this month. Nine of 12 Navy aircraft carriers deployed at some point in the past year, and all but one has participated in forward deployed operations since 11 September 2001.

Where We Are Today . . .

The Navy is underway on an even larger scale today, executing the Global War on Terrorism, maintaining our nation's commitments to our allies, and standing poised to carry out the President's orders should it become necessary to disarm Iraq by force. One year ago, in support of Operation *ENDURING FREEDOM*, the Navy was called upon to provide a moderate surge force; today we are surging near maximum capacity. Indeed, 207 of our 306 ships--representing 68% of our force--are underway, including 7 of 12 carrier battle groups, 10 of 12 amphibious ready groups, and 33 of 54 attack

submarines. The Navy and Marine Corps alone have nearly 600 aircraft forward deployed in support of potential contingencies. SEALs, construction battalions, explosive ordnance disposal teams, port operations support units, maritime patrol squadrons, medical teams, and naval coastal warfare units also are overseas--all are trained and ready for combat. Eleven of 15 Maritime Prepositioning Ships already have offloaded equipment in support of Marines in Kuwait, and 130 ships under the control of the Military Sealift Command are transporting forces to the theater. We have deployed USNS COMFORT, a hospital ship with a 1,000 bed capacity, and three field hospitals as well as our High Speed Vessel (HSV), which serves as a test bed for the Littoral Combat Ship. One of our command ships, USS MOUNT WHITNEY, is deployed as the flagship for Commander, Joint Task Force Horn of Africa. In all, more than 76,000 Navy men and women are deployed today worldwide.

By any measure, today's Navy is the most capable force we have ever put to sea, maintaining a persistent and capable forward presence and the ability to surge significant combat power quickly, wherever required, using the largest maneuver space on the planet. Moreover, in an era of growing anti-access threats--whether political- or threat-based--the inherent ability of naval forces to project offensive and defensive power in an unconstrained manner from the sovereign sea base is growing in importance. We are trained and ready on arrival, able to climb into the ring with the enemy and project power in ways we could only imagine only a few years ago. And, thanks to the support of this committee, we are presently experiencing the highest state of overall readiness I've ever witnessed in my 36 years of naval service.

How We Got Here . . .

Realizing several years ago that we needed to balance, more effectively, current readiness against the requirement to recapitalize our fleet, we invested an additional \$6 billion in readiness accounts, including the Flying Hour Program, Ship Depot Maintenance, Ship Operations, and Sustainment, Recapitalization, and Modernization. We made some tough budget choices to fix critical personnel and readiness issues. With this committee's support, we made these investments in a timely and fortuitous manner, and are now reaping the resultant personnel, material, and training benefits in the success of our ongoing operations.

We continue to make difficult, but prudent, choices in the FY04 budget. For instance, you will notice a significant decline in ship depot maintenance funding. Despite the reduction, our budget achieves the CNO's readiness goals: funding 96.2% of validated requirements--the same as FY03. This is a function of the return on the readiness investment made over the past two budgets and the supplemental funding that allowed us to reduce the maintenance backlog, improve business practices and maintenance processes, and accelerate the retirement of older, maintenance-intensive ships.

Beginning with the personnel side of readiness, the Navy is retaining Sailors at the highest rates in decades. During FY01 and FY02, first term reenlistments averaged over 67%. In a phenomenal increase, our deploying battle group manning, measured at the six month point prior to the start of a deployment, has improved from 91% in FY00 to 99% for the last five battle groups. Pay raises and enhancements to special pays (especially career sea pay) enacted over the past two years are yielding impressive results. Moreover, our efforts to reduce out-of-pocket housing expenses, authorization for our Sailors to participate in the Thrift Savings Plan, improvements in medical care, and retirement reforms approved by Congress are among the significant factors that have helped us retain the Sailors

we need today. On the recruiting front, we have now met our accession planning goals for 4 straight years and for 19 straight months. Our Delayed Entry Program posture (which measures the percentage of the year's recruiting goal that is already accommodated at the beginning of the year) was 54% for FY03, near the highest level ever. We are encouraged by the fact that we have garnered higher quality recruits than in previous years, with over 92% of the FY02 recruits being high school graduates.

Anti-Terrorism/Force Protection (AT/FP) personnel requirements continue to stress our ashore and afloat manpower planning. As much of our surge capability in the AT/FP mission area resides in the reserve component, this essential element of our total force has been fulfilling a crucial role in the Global War on Terrorism. Additionally, for the first time since the Korean War, we have activated a reserve carrier based fighter-attack squadron, which presently is flying F/A-18A aircraft deployed aboard USS THEODORE ROOSEVELT in the Eastern Mediterranean. It was necessary to activate this squadron to deconflict the transition timeline for one of our active F/A-18E/F Super Hornet squadrons that would have been required to deploy early in support of possible operations in Iraq. We are very pleased with the responsiveness and performance of VFA-201 in this important role.

More than 87,800 Naval Reservists make up nearly 19% of the Navy's total force. With a total of over 9000 reservists recalled to active duty today and over another 2200 with orders pending, the effective integration of reserve elements into active components is indispensable to readiness and management of our personnel tempo in the Global War on Terrorism. We face three challenges with this reserve activation. First, several of our key reserve capabilities, such as Inshore Boat Squadrons providing worldwide port security, soon will be close to the two-year involuntary activation limit. We are examining ways to migrate some of this important capability to our active force while expanding reserve capability in this area. Second, with over 3600 medical personnel deployed aboard USNS COMFORT, in fleet hospitals, and to other forward locations above our normal posture, we are maintaining continuity of medical care for CONUS-based forces, their dependents, and retirees by combining selected medical reservist backfills with an outsourcing strategy. Finally, we continually revalidate the billets filled by reserves with an eye toward demobilizing those who are not essential to the war effort in order to achieve optimum manning efficiency. However, the cost to mobilize reservists to active duty is an unplanned resource challenge.

Two years ago, I reported to you significant concerns with the material aspect of our current readiness. As one of the CNO's top five priorities, Navy current readiness received significant attention within our budget submissions. With focused effort, careful planning and congressional resource support, we have made tremendous gains in aviation material readiness, ship material readiness, and preferred munitions.

In aviation material readiness, one year ago there were 44 bare firewalls in the EA-6B Prowler fleet--a critical support aircraft that we place in the category of "low density-high demand" assets. Today there are zero bare Prowler firewalls, although we now need to purchase new outer wing panels for a number of these aircraft to ensure their continued viability until replaced by the EA-18G. I also report to you that we have made significant progress in reducing aircraft cannibalization, the practice of taking parts from one aircraft to make another operational. Despite the increased operational tempo (OPTEMPO) associated with executing the Global War on Terrorism, we've continued to make progress in this area, reducing cannibalization by an additional 5%.

The Navy also has made significant progress in shifting our weapon system logistics support strategy from one of buying parts and managing inventory to one of buying performance and managing results. The vehicles to accomplish this transition are Performance Based Logistics (PBL) contracts. These contracts are usually long term in nature and both empower and incentivize the provider to improve product support while reducing the total cost of ownership. The primary goal of the PBL approach is to enhance warfighter logistics support via improved supply availability, decreased cycle time, increased reliability and reduced obsolescence. The PBL methodology is structured to accomplish these goals by capitalizing on industry best practices and reengineering logistics support to perform more like a commercial system.

Currently, the Navy has approximately 25% of its active inventory managed under a Performance Based Logistics agreement. This approach has achieved unparalleled success across both aviation and ship programs and is equally effective when applied to a single item of supply or an entire weapons platform. A sampling of PBL successes may be found in the following examples.

- F/A-18 E/F: The F/A-18 E/F Integrated Readiness Support Teaming (FIRST) contract encompasses support for the entire aircraft. Supply availability is 85% versus 62% for F/A-18C/D aircraft. Projected savings are \$52M over 5 years.
- Close-In -Weapon System (CIWS): This contract is achieving 89% supply availability versus a previous performance level of 60%. Projected savings are \$5M over 5 years.
- Aviation Tires: This innovative 5-year contract has virtually taken the Navy out of the business of buying and warehousing tires in support of 17 different aircraft. Supply availability is 98% versus a previous performance level of 81%, with projected savings of \$46M over 15 years.
- AEGIS Weapons System: This contract is achieving 95% availability versus a previous performance level of 85%. Projected cost savings is \$6M over 4 years.

Early retirement of some aircraft models enabled the Navy to avoid costly maintenance requirements and reinvest those savings across other readiness accounts. For example, the F/A-18E/F Super Hornet--the first three squadrons of which are deployed today to the Arabian Gulf--operates at one third the cost of the aging and maintenance-intensive F-14s it is replacing. Moreover, the Super Hornet provides significant readiness improvements while simultaneously providing a 40% increase in combat radius and greater payload capability than the F/A-18C/D.

The addition of precision-guided munitions (PGM) capability to every strike aircraft means we now measure air wing capability in targets per sortie instead of sorties per target. Accordingly, early attention to the Navy's preferred munitions requirements was another key enabler of today's readiness gains. At the onset of Operation *ENDURING FREEDOM*, the Navy and Marine Corps did not possess the desired inventory of PGMs. This inventory was further depleted by operations in Afghanistan. However, our increased investment in the PGM industrial base and procurements continues to move us in the right direction. Laser guided bomb (LGB) production is currently at the maximum rate, and Joint Direct Attack Munition (JDAM) production is forecast to reach the maximum rate by August 2003. In anticipation of possible combat operations in Iraq, the Navy initiated cross leveling of LGB and JDAM inventories with the Air Force to mitigate the delay in production ramp-up and to replenish the Navy's JDAM inventory shortfalls. Maximum procurement of PGMs continues to be a high priority for the CNO and Navy Fleet Commanders.

We have made similar gains in ship material readiness. Supplemental funding; cost avoidance through the accelerated retirement of older, high maintenance frigates and destroyers; the expanded use of multi-ship/multi-option, maintenance contracts with private industry; and innovative scheduling enabled us to reduce deferred ship maintenance by 45% (from \$356M in FY01 to \$197M in FY02). Meanwhile, the consolidated shipyard activity in Pearl Harbor continues to demonstrate the flexibility and effectiveness of integrating depot and intermediate ship maintenance under a mission funding financial system. Mission funding enabled Pearl Harbor Naval Shipyard and Integrated Maintenance Facility to begin immediately repairing damage resulting from USS DENVER and USS GREENVILLE collisions and to provide recent unscheduled drydock repairs on USS PAUL HAMILTON and USS REUBEN JAMES.

Recognizing that naval forces at sea are less vulnerable than ground forces to chemical, biological or radiological (CBR) attack, one of our concerns as we prepare for a possible contingency in Iraq is the adequacy of our Sailors' protection against such attack. We determined that our current quantity of equipment was adequate for rotational force operations but not for large surge force operations. Considering the volume of forces identified for this campaign, we fundamentally changed scheduled deployment priorities due to the requirement to surge such a large force structure outside of the normal deployment cycle. The Commander, Fleet Forces Command (CFFC) validated and requested additional emergent funding to improve CBRND readiness for the increased force requirements. The CFFC study concluded that afloat forces possessed the requisite gear but that expeditionary forces most vulnerable to CBRN attack needed additional equipment and training. We expedited procuring additional CBRND equipment stocks and accelerated a "pilot" Naval Sea Systems Command CBRND Readiness Improvement Program (RIP) to improve ashore forces' readiness and training. We also fielded an interim presumptive and confirmatory BW threat identification capability. These actions resulted in a significant improvement in CBRND capabilities for the fleet.

In total, the Navy has expended over \$160M to improve its ability to fight and win in a CBR contaminated battle space. Today, all of our forward deployed Sailors, including those who are or could be based ashore, are equipped with adequate supplies of the most appropriate CBRND equipment available. Meanwhile, we are committed to an aggressive anthrax and smallpox vaccination program, which is proceeding apace. To the maximum extent possible, we will look to deter and avoid direct CBRN threats to our forces. Finally, we maintain efforts to field additional capability, and continue to analyze our prospects for sustained operations in a CBRND environment and our ability to reconstitute for additional future tasking.

Training readiness is another success story. We continue to place greater emphasis on use of simulation and other means of finding efficiencies that can be captured and diverted into other readiness accounts. Inherent in our employment shift to a rotational force that is surge-capable, we have found innovative ways to achieve an acceptable level of surge readiness earlier in a battle group's deployment cycle. Adjustments to key training and scheduling events during the inter-deployment training cycle are resulting in ships and squadrons being capable of accelerating to a deployable status sooner. This has been manifested during the current crisis in that the last three carrier battle groups we sent forward were all deployed several months early at acceptable levels of readiness.

Sustaining the Surge . . . and Restoring Readiness Post-Crisis

While we have invested wisely in order to gain the highest available readiness, today's surge has put a significant strain on every Navy resource. Regardless of whether actual combat operations occur in the near term, our military forces are deployed far beyond normal peacetime Global Naval Force Presence Posture (GNFPP) training and deployment cycles. It is likely that the ABRAHAM LINCOLN Battle Group will have been deployed for over 9 months upon its return from the Arabian Gulf. Such deployments bear significant, unprogrammed costs in fuel and parts that we will need to recover if we are to continue to operate at this tempo. Moreover, once the present surge is complete, we will need to reconstitute our forces quickly in order to sustain the readiness required to continue the Global War on Terrorism. Returning to and stabilizing a rotational, forward deployed/surge capable naval force will require careful analysis and balancing of ship maintenance schedules, deployment durations (including some battle group deployments in excess of our six month goal), aircraft modification and transition schedules, resupply of parts inventories, and possible relaxation of overseas commitments. At the same time, our most precious asset--our Sailors and their families--will need time to recover from the personnel cost of these long deployments.

Innovative planning already is underway to maximize on-station time of our ships while mitigating the impact of longer deployment schedules on our Sailors. One such effort, the Navy's Sea Swap initiative, is experimenting with exchanging forward deployed crews, the first of which occurred aboard USS FLETCHER in the Western Australian port of Fremantle. We will continue this initiative with another crew change this summer and we intend to examine other pilot programs in optimal manning, rotational crewing, and assignment incentive pay designed to make more optimum use of our capital assets.

Current operations have severely disrupted planned maintenance schedules for our ships and aircraft. Schedule "churn" challenges a maintenance infrastructure sized and culturally inclined to support peacetime sustained operations instead of a large, post-surge ship and aircraft workload. This, in turn, results in greater cost for the same amount of maintenance performed. Accordingly, we are focusing on the maintenance strategies and processes we will use to restore our ships and aircraft to deployment-ready status. We are already working hard to reorganize priorities and resolve competing maintenance requirements in order to return to a full readiness posture capable of surging in support of future joint operations. Finally, we are examining ways of incorporating the lessons learned from this surge into a new approach to maintenance that will be more capable of handling future surge operations.

Replacing units which have been deployed for many months will likely require the same type of shortened training cycles we have been using for our surging units. This is sustainable in the near term, but we will need to work toward more normal training cycles in order to retain our critical warfighting skills in all areas (especially those which might not be required during a potential conflict with Iraq, such as anti-submarine warfare).

Despite increases in production, a near term conflict with Iraq will reduce the Naval PGM inventory, potentially including the Tomahawk Land Attack Missile (TLAM). Consequently, and depending on the duration of a potential conflict, it may be necessary to continue PGM production at maximum capacity.

Challenges and Transformational Initiatives

The Navy is committed to extending our culture of readiness into the future, to include support for an operational concept that will maintain a substantial portion of the fleet in a readiness condition that would permit a rapid surge of significant combat power to augment the normal rotational force posture maintained under the Global Naval Force Presence Policy. This construct also includes the ability to reconstitute rapidly following a contingency.

To date, the Navy has conducted significant analysis and has established a ready surge force construct of 6 carrier battle groups (soon to be transitioned to carrier strike groups, or CSGs, in line with the CNO's Sea Power 21 vision) and 6 amphibious ready groups (soon to be transitioned to expeditionary strike groups, or ESGs). We are currently defining our surge requirement across the full spectrum of Navy combat power and reshaping our readiness processes, including the inter-deployment training cycle, to institutionalize this surge capability. We also will seek to do a better job of balancing our resources to support this re-alignment. Elements of the CNO's Sea Power 21 vision will complement these initiatives while enhancing the key enablers of people and processes.

One of the biggest challenges we face as a surge capable rotational force is in maintenance workload predictability and stability. Implementing this new surge concept will require innovative approaches to maintaining our ships and aircraft. In FY 2004, we will integrate Puget Sound Naval Shipyard and the Pacific Northwest Intermediate Maintenance Facility. Converting these activities to Mission Funding is a vital part of this integration and will deliver increased responsiveness to the warfighter and more efficient use of resources. Mission funding provides the flexibility to match workforce to the highest priority work requirements without delays or administrative funding constraints. It will allow for the most effective use of all maintenance resources in the region, unconstrained by organizational boundaries, and will eliminate redundant overhead functions. In short, Mission Funding is essential to provide fleet commanders with the inherent flexibility to execute their highest priority requirements in this surge environment, where ship maintenance availabilities and operational schedules will be flexing to support the GWOT, Southwest Asia and future contingencies.

Ensuring that an increasing number of deployed ships sustain high readiness is critical and not easily attainable given the restrictions on the use of overseas depot facilities. Acquisition restrictions forced us to send U.S. shipyard workers overseas to do routine maintenance work on USS FLETCHER, our Sea Swap experiment test ship. This is not good stewardship of taxpayer dollars. We need a common sense approach to existing legislation to afford better, more cost-effective maintenance support to our forward deployed forces.

Public/private partnerships are a key enabler to improve our maintenance capability. For example, our naval aviation depots (NADEPS) are world-class organizations, replete with examples of novel approaches to the aircraft maintenance business. The NADEPs are currently executing 15 public/private agreements valued at over \$182 million. These partnerships are primarily long-term contracting initiatives or memoranda of agreement that establish a joint venture between private industry and the public yards. Often this involves one party providing technical expertise and direct labor, with the other providing the actual facilities or support equipments required to execute the work. There are approximately 16 additional agreements in the approval and negotiation phases valued at over \$492 million for the base period of their contracts. With the agreements that are in place, we have seen the

most common inhibitors to maintenance depot production (material, carcass, and engineering constraints) become exceptions rather than the rule. By removing the barriers that inhibit government/industry teaming, we can encourage greater use of these partnerships as a primary means of improving depot support. Congress' support for "Centers of Industrial and Technical Excellence" has been a very positive development in this regard.

The Secretary of Defense has cited public/private partnerships as a key initiative under the Future Logistics Enterprise, which is intended to transform logistics support to the warfighter in the areas of supply, maintenance, and transportation. In addition, the CNO has cited public/private partnerships as one of the key facets of Sea Enterprise, the sweeping initiative to capture efficiencies in order to recapitalize the Navy. Along with the NADEP examples mentioned above, other partnerships include aircraft carrier and submarine maintenance work and resource sharing, propeller repair facilities, and SSGN design and conversion.

Enterprise Resource Planning (ERP) is a critical part of any discussion about modernizing our organizations and improving their efficiency. Navy ERP is comprised of four distinct efforts covering program management, financial management, regional maintenance and supply management. ERP is the tool which enables a significant reduction of costly legacy systems; it facilitates an economic, standardization of business and administrative processes, and will provide much greater resource and cost visibility to decision makers at all organizational levels. We must sustain our ERP investment and implementation to continue to harvest efficiencies that can be redirected to warfighting priorities.

The high quality of training we provide to our Sailors is largely unseen by the public and often taken for granted, yet it is an essential element of their impressive combat readiness. Accordingly, you will note a significant investment in training within the President's budget. As you know, the Navy has trained its last battle group at Vieques Island, Puerto Rico and will cease operations there in May of this year. The loss of this valuable asset will be offset by upgrades in certain range capabilities, cooperative use of other service ranges (including the developing Joint National Training Capability), and integration of new technologies such as Virtual At Sea Training (VAST), which together will provide fleet training superior to that currently being conducted by deploying battle groups. We intend to use the Training Resource Strategy (TRS) as a key resourcing framework to support continued transformation of fleet training. Beginning in the Atlantic Fleet, TRS will move us to a 21st Century training environment. These transformational training initiatives were needed to replace a legacy training regimen that did not fully train to the increasingly joint, interoperable, and geographically dispersed nature of today's combat operations. With this initiative, our Navy is aligning its training methodology to flex naval forces in shifting operational and tactical training environments through a mix of live and virtual training environments.

Battle groups soon will be able to conduct combat exercises in port with netted combat system trainers that enable crews and staffs to train under tactically stressful scenarios prior to at-sea training events. Our carrier air wings will use simulation more effectively and will conduct long and short-range strike missions against a variety of challenging fixed and mobile targets. These initiatives, together with new range instrumentation being developed cooperatively with the Air Force, also position Navy ranges to support fully the developing Joint National Training Capability. This program will be expanded in future years to support the Pacific Fleet and will serve as the vehicle for continued transformation of fleet training in the Navy.

No readiness challenge is greater than that of encroachment on our training ranges. We rely on full use of our ranges, facilities and advanced technology to ensure our forces have a decisive advantage in combat. Unfortunately, training areas that were originally located in isolated areas are today surrounded by recreational facilities and urban and suburban sprawl. Increasing regulation, permitting processes, and litigation have cumulatively diminished the Department of the Navy's ability to effectively train our personnel and test our weapon systems. We actively seek to be good stewards of the environment, and the record shows we have been successful in this area. However, we are also asking for the legislative relief we need in the form of the Readiness and Range Preservation Initiative in order to bring the twin requirements of national security and environmental conservation into better balance.

We believe it is important that our Facilities Sustainment, Restoration and Modernization (SRM) program remains robust enough to maintain our shore facilities and infrastructure. While our FY 2004 Military Construction and Sustainment program reflects difficult but necessary trade-offs between shore infrastructure and fleet recapitalization, the majority of the SRM trends are very good. Sustainment funding has increased from 84% to 93% of the requirement in FY2004. Our FY2004 budget request puts us on a course to achieve the DoD goal of a 67 year recapitalization rate by FY2008. In pursuing that goal we will explore innovative solutions to provide safe, efficient installations for our service members, including design-build improvements, more efficient facilities, and BRAC land sales via the GSA Internet.

Conclusion

Again, I would like to thank the members of this committee for all you have done for our Navy. The first war of the 21st Century promises to be a long and difficult struggle. Over the past year, the United States Navy has excelled in a very dynamic and dangerous environment in support of this vital effort because we are well trained and equipped to go in harm's way. Every day, your volunteer Sailors are dedicated to providing flexible, forward deployed, combat ready power on a moment's notice anywhere in the world to ensure the safety and vital interests of the American people. We are this way because of the tremendous support we have received from the American people and from the Congress--support we must be able to count on if we are to remain prepared to conduct the Global War on Terrorism and respond to any other contingencies that arise in this dangerous world.

Budgets always present difficult choices, and this budget is no exception. I believe the President's 2004 budget firmly supports the priorities needed to allow the Navy to continue delivering precise, persistent and responsive combat capability at sea. It builds upon previous submissions and will help continue to translate the Navy's vision into tomorrow's warships, aircraft, weapons, information networks and, ultimately, Sailors. On behalf of our Sailors and their families who proudly serve our nation, I thank you for your continued commitment to the readiness of the finest Navy in the world.

**STATEMENT OF
GENERAL ROBERT H. FOGLESONG**

**VICE CHIEF OF STAFF
UNITED STATES AIR FORCE**

BEFORE THE

**READINESS SUBCOMMITTEE
COMMITTEE ON ARMED SERVICES
U.S. HOUSE OF REPRESENTATIVES**

March 18, 2003

**EMBARGOED UNTIL
RELEASED BY THE
SUBCOMMITTEE**

WRITTEN STATEMENT FOR THE RECORD**HASC (Readiness Sub-Committee)****18 March 2003**

Mr. Chairman, members of the committee, thank you for this opportunity to provide you with the status of Air Force readiness. As the Air Force's Vice Chief of Staff, I want to thank you for your continued focus on the readiness challenges facing our airmen today. The Air Force is committed to transformation and to maintaining a ready force while controlling cost growth, modernizing systems, and recapitalizing physical assets.

As we celebrate 100 years of powered flight this year, we are firmly focused on the next 100 years. We are in the midst of more than a decade of unparalleled and unmatched air and space dominance across the full spectrum of operations -- humanitarian to warfighting. We are proud of our record of success but do not rest on our accomplishments. We have embraced the opportunities afforded by the information revolution and have marshaled the full resources of our service to leverage these technologies in the battlespace. Our airmen have met the challenges of the changed security environment, and they stand ready for the next challenge. Born as an expeditionary service, we remain true to those roots today, presenting our forces and capabilities through our Air and Space Expeditionary Force (AEF) construct.

Our three Air and Space Core Competencies are our source of strength as a service and form the basis through which we organize, train, and equip. They are: Developing Airmen, Technology-to-Warfighting, and Integrating Operations.

Developing Airmen: The Heart of Combat Capability

A ready force is founded on its people. The men and women who comprise our Total Air Force -- Active Duty, Guard and Reserve -- are the best America has to offer. They are officers, enlisted, civilians, and contractors from every corner of the country and every walk of life. World-class airmen are the key ingredients to sustaining our record of success. We are dedicated to recruiting, training, and retaining professional airmen. We can make no greater investment and have no greater resource than in our people. They are our number one weapon system.

Recruiting. We remain committed to an all-volunteer force. Our volunteer airmen are dedicated, experienced, smart, disciplined, and representative of our country as a whole. They are personally invested and grounded in our civilian communities. We recognize a diverse force is crucial to maximizing our combat capability. We recruit people from all backgrounds, all races, and all religions and rely on their unique and diverse experiences and capabilities to reach our full potential.

Last year the Air Force completed one of its best recruiting years ever, and we will exceed our recruiting goals again this year. With a sharply increased advertising budget, enhanced hiring incentives and enlistment bonuses, and improved recruiter manning, the Air Force is making enlisted recruiting a priority, and it is paying off. The Air Force also continues to attract the country's best and brightest to join our officer corps. We have introduced additional incentives to recruit more students into ROTC, especially those with science and engineering proficiencies. We continually adjust our goals to meet new force requirements and the demands of a competitive marketplace.

Training. The Air Force requires sophisticated airmen who are trained to leverage technology and ready to perform in a fluid environment -- air and space leaders for the 21st Century. This will require targeted investments in the next generation of airmen. To that end, the Air Force has introduced a coordinated effort to address all aspects of an airman's career development, professional education, and assignments in sum rather than individually. This deliberate force development effort generates policies tailored to the needs of the individual airman throughout his career. Comprehensive in scope, our training is doctrinally based and focused on three levels: tactical, operational, and strategic.

The Air Force needs both expert specialists and broadly competent generalists, and we will offer our airmen opportunities to do both. The Secretary of the Air Force initiated a program to increase advanced academic degree opportunities for officers, with special emphasis in science, engineering, and politico-military affairs. We have teamed with the Naval Postgraduate School to build a joint program focused on providing graduate education across a range of space activities. We are beginning to extend Air Force Institute of Technology (AFIT) graduate degree programs to our enlisted force for the first time. All in all, we recognize the need for flexible and agile training and are dedicated to growing leaders with the skills and competencies needed to meet 21st Century demands.

Personnel Mix. Our number one personnel challenge is adapting to the new steady state -- a higher tempo of operations and a shifting skill mix requirement. With a 30 percent reduction in manpower since 1990 and a significant increase in worldwide taskings over that same period, the Air Force is experiencing a dramatic jump in

operations and personnel tempo. We have discovered that while the number of airmen is adequate, the mix of skill sets and the military/civilian/contractor ratio must be adjusted to reflect new realities.

Recognizing the new demands placed on us by the war on terrorism, we initiated a comprehensive manpower review to determine relative stress amongst career fields and to explore options to alleviate that stress. We have identified nearly 26 thousand military or civilian positions that potentially could be converted to civilian or contractor positions, with the goal of redirecting uniformed airmen into those positions that reflect our distinctive capabilities. We have realigned some new recruits into our stressed career fields and completed a thorough review of our training resources to maximize capability. Additionally, we are exploring technologies to reduce the workload and corresponding manpower requirements. We have several human capital initiatives underway to address this skill mix problem, but it will take focus, time, and funding to solve. In the short term, we are aggressively pursuing personnel and authorization changes from less to more stressed career fields as well as voluntary retraining programs to address the skills mix problems.

Retention. We have found that our high operations tempo and uneven workload are major determinants in an airman's decision to leave the Air Force. It was difficult to accurately determine last year's retention rates due to Air Force implementation of Stop Loss. Nonetheless, we will continue to use an array of force shaping tools, to include bonuses, mentoring, and re-recruiting efforts to sustain our record of retention success. Air Force quality of life initiatives will ensure a suitable standard of living for our world-class airmen and their families and are essential retention tools. While our increased

accession levels, improved retention, application of Stop Loss, and activation of ARC volunteers have created a unique overstrength problem, we remain committed to meeting total end-strength goals.

Retention of pilots, navigators, and Air Battle Managers is of major concern. Though pilot retention is the highest in four years, we still suffer from a long-term shortage of pilots. We have increased the output of our pilot training courses, but training new pilots does not immediately solve the problem -- you cannot replace the lost experience. The resulting experience shortage has detrimental effects on force management, leaving us with undermanned staffs, less experienced formal flying training instructors, stressed test programs, and fewer mentoring opportunities.

Our flexible Aviator Continuation Pay (ACP) program is an important part of our broad-based plan to retain pilots, and we extended the program this year to include navigators and Air Battle Managers. Encouragingly, the ACP long-term initial take rate rose sharply to 47 percent in FY02 from 30 percent in FY01. So far in FY03, 54 percent of initially eligible pilots have signed up for long-term agreements of five years or more.

Retention for high tech specialties is also a concern as the pull from industry is strong. This draw is exacerbated by long, frequent deployments in many of our high tech career fields. In response, the Air Force this year introduced the Critical Skills Retention Bonus for highly stressed and highly skilled career fields.

The Air Force has reduced its civilian workforce by nearly 100 thousand since 1990, leaving only 10 percent of today's Air Force civilians with less than ten years in service and over 40 percent eligible to retire in five years. We must revitalize our professional occupations with new hires while minimizing the impact on the existing civilian

employees. We have partnered with OSD to develop new civilian personnel legislation that will allow us to hire faster, simplify job changes, and make appraisals and rewards more meaningful. It will also provide us more flexibility to further integrate civilians into the expeditionary force to meet the demands of the new steady state.

Recent pay increases are making a difference and have reminded our airmen that we value their service. Targeted pay increases that reflect the realities of the marketplace are critical to meeting our toughest retention challenges. We must retain the flexibility to put more pay where it is needed while ensuring that entry-level pay is very competitive.

Technology-to-Warfighting: The Tools of Combat Capability

When America sends its men and women into combat, they deserve the resources and support to guarantee victory over any adversary they face. We are determined to give them those cutting-edge tools. Moving technology from the drawing board to the hands of the warfighter is essential to maintaining a ready force.

The Air Force was born out of innovation, and it remains our hallmark today. With a pioneering spirit, we are dedicated to pushing technology's boundaries. We are rapidly applying recent advances to dramatic effect, translating our technological vision into warfighting results.

Remotely Piloted Aircraft. There is no greater example of technology-to-warfighting than the Predator. It combines the dynamics of manned aviation with the remote operations techniques of unmanned satellites and information connectivity within a single system capable not only of collecting and disseminating information, but of

producing combat effects. In the midst of combat, we accelerated the Predator program to increase production and to retrofit existing airframes with improved capabilities. The use of streaming video during recent operations was critical, and we are on track to add Hellfire missiles to the entire Predator fleet.

Global Hawk builds on the success of the Predator system by incorporating a robust reachback capability that reduces our forward operating footprint, lowers costs, and improves personnel tempo. This long endurance, multi-intelligence platform gives us the persistence we need to keep the Joint Force Commander (JFC) informed up-to-the-minute.

We are aggressively developing additional unmanned platforms and are exploring their appropriate future role in combat. We are eager to field these systems not because they are unmanned but because of their greater persistence and digital acuity. They are responsive to dynamic tasking and afford us the ability to swarm the battlespace and overwhelm enemy defenses.

Integrated Architecture. The integration of these unmanned platforms seamlessly into a network of manned, unmanned, and space-based systems will dramatically shorten the find, fix, track, target, engage, and assess (F2T2EA) cycle allowing us to anticipate our enemy's moves and to defeat him on our terms. To that end, we are transitioning from a collection of independent systems to a horizontally integrated system of systems capable of machine-to-machine conversations.

In the future, the Multi-sensor Command and Control Constellation (MC2C) will provide the JFC with real-time, enhanced battlespace awareness and decision-quality data through an improved network of air, ground, and space assets. The Multi-sensor

Command and Control Aircraft (MC2A), a single wide-body platform, will replace many of our independent command, control, communications, computer, intelligence, surveillance, and reconnaissance (C4ISR) functions and will relieve the stress on our Low Density/High Demand (LD/HD) assets like the Rivet Joint, Airborne Warning and Control System (AWACS), and Joint Surveillance and Target Attack Radar System (JSTARS). It will be a core element of the future Joint Cruise Missile Defense architecture by fielding the Multi-Platform Radar Technology Insertion Program (MP-RTIP) sensor. This next-generation sensor is capable of wide-area surface surveillance and tracking to find, fix, and track ground targets and airborne cruise missiles. Its enhanced Battle Management/Command and Control (BM/C2) will enable dynamic execution against time sensitive targets, dramatically shortening the kill chain.

Because we recognize the Air Force never fights alone, we are coordinating closely with our sister services to ensure full interoperability of these future acquisitions and to eliminate seams between existing systems.

Unlimited Horizon. This integrated architecture hinges on our ability to master the high ground of space. We have partnered with the National Reconnaissance Office to begin development of an innovative Transformational Communications Architecture (TCA) which will leverage emerging technologies such as laser communications and internet-based protocols to remove bandwidth as a constraint to operations -- a key enabler of network centric warfare. We are also developing new sensors and capabilities, such as Space Based Radar (SBR), that will give us the capability to conduct surveillance and reconnaissance deep into denied areas, day or night. These

and other space assets have the potential to revolutionize warfighter command and control.

Revolutionary Capabilities. The F/A-22 is the cornerstone of the Air Force's ongoing transformation. America needs the F/A-22 for 21st Century air dominance. It is capable of countering anti-access threats from day one of any conflict, allowing joint and coalition forces to operate with impunity inside enemy territory. The F/A-22 brings stealth into the daytime for the first time, enabling persistent 24-hour operations. Its revolutionary capabilities are designed to defeat future air defense systems for decades to come. The Air Force will continue executive oversight of the F/A-22 acquisition to ensure program success.

The Joint Strike Fighter (JSF) also represents a revolutionary leap in technology and will complement the F/A-22. This versatile multi-role fighter is optimized for all-weather, precision air-to-ground operations and provides the persistent force required for around-the-clock operations. With a commitment to affordability, the Air Force is using the "Cost As an Independent Variable (CAIV)" approach to help ensure the JSF is not cost-prohibitive.

Integrating Operations: Maximizing Combat Capabilities

The Air Force effectively focuses the power of its people and the strength of its technology into a synergistic whole to generate immediate results in the battlespace. We are developing effects-based capabilities rather than individual systems. We are exploring and employing innovative operational concepts to maximize our combat

capabilities. Success in this new century requires a modern, ready force with the systems, infrastructure, and capabilities necessary to operate in both air *and* space.

Capabilities-Based Force. The Air Force has transitioned from a platform-based garrison force to a capabilities-based expeditionary force. Our emerging Concepts of Operations (CONOPS) are lending focus to our continuing transformation. They define how we fight and drive our efforts to integrate our air and space capabilities with joint, allied, and coalition forces. They support efforts to eliminate waste and free trapped resources for the warfighter. They help articulate any disconnects between program development and desired end-user capabilities.

Recapitalization and Modernization. Dedicated airmen employing innovative concepts are mitigating the impact of old systems and technology. However, aging systems pose a real threat to our continued air dominance. The average Air Force aircraft has about 22 years in service. With some manufactured as early as 1955, our KC-135 fleet averages 42 years in service. We have never dealt with a force this old. Our aging aircraft are vulnerable to myriad problems, including technical surprise, vanishing vendors, and increased operational costs. We have enjoyed a down payment on our recapitalization but require sustained funding to maintain the force capable of supporting the National Security Strategy and JV2020. Eventually, new acquisitions will have to replace these legacy systems. In the interim, we are finding innovative means to keep current systems operational in the near term and are taking advantage of new opportunities to employ old systems in new ways.

This and next year's budgets look to build on the FY02 foundation and accelerate modernization while maintaining gains in readiness and people. We are investing short-

term and long-term across all of our capabilities, balancing modifications of existing systems with the development of new systems. Air Force modernization efforts are supporting our transformation goals while continuing to develop and field needed systems, with nearly half of our investment in RDT&E.

Current projections show all three Air Force bombers (B-1, B-2, and B-52) should be structurally sound for the next four decades. While all of our bombers have key modernization needs, modernization of the bomber force can meet requirements through the foreseeable future. The Air Force is committed to SOF modernization through fielding the CV-22. The approved Multi-year Procurement of 180 C-17s will support mobility requirements to move 54.5 million ton miles per day, with six additional bases receiving C-17s starting in FY05.

Readiness. From 1996 to 1999, readiness rates for our major combat units dropped from 91 percent to a low of 65 percent. Since then, they have climbed and remained at roughly 70 percent. Shortages of personnel, higher tempo, and aging aircraft are keeping readiness below our targeted levels, which is a cause for concern. However, we have been able to hold steady in the face of increased operational demands on our force.

Our aircraft readiness continues to be a success story. In FY02, we enjoyed our highest overall readiness rates in six years -- the largest improvements since the mid-80s. Sixteen of 20 systems improved mission capable rates, at a time when all of our systems were flying more hours. These gains are the result of robust support for spare parts and are a testament to a dedicated workforce, fleet modernization efforts, and process improvements from depots to the field.

Our engine readiness rates reflected impressive gains as recent investments continued to pay dividends throughout FY02. Our U-2s sustained their mission capable rate while flying their most hours since the Gulf War, 35 percent higher than FY01. Our Predator fleet posted its best readiness rates ever while averaging almost 200 hours per month. Our C-5s posted their best readiness rates since FY96 while flying the most hours since the Gulf War. The B-1 consolidation is paying dividends, as our B-1s posted dramatic gains in readiness, with current rates at historical highs. All of our fighters are experiencing a steady decline in cannibalization. We have made great strides in reducing the number of aircraft in depot for maintenance, putting over 25 percent more aircraft on the ramps for the warfighter since 2000.

We have taken some risks in Depot Purchase Equipment Maintenance (DPEM) funding mostly due to the rising costs of aging systems. This may translate into deferred depot maintenance on engines and aircraft that could ultimately affect our readiness. While maintenance readiness challenges remain, we are confident the dramatic gains we experienced last year provide the momentum the Air Force needs for continued improvements.

Our people are ready. We are sustaining our personnel readiness rates in the face of higher OPSTEMPO, manning shortages, and reduced training opportunities. Operation NOBLE EAGLE alerts and Operation ENDURING FREEDOM deployments have left our operational units with less capability and opportunity to train. Fortunately, our pilots are flying adequate hours. Despite uncertainty in taskings and mission profiles, the Air Force fully funded the flying program in FY02 and FY03 and will continue to fly 100 percent of the flying program. For the past three years, the Air Force

has executed its budgeted O&M flying hours without requesting additional funding for contingency flying hours. Our airmen are gaining real-world experience you cannot create in a training environment. Today, over 70 percent of our rated aircrew is combat experienced!

However, many of our aircrew instructors have been pulled to fulfill priority operational requirements, making it difficult to train new aircrew to relieve the combat stress. This is especially true of our LD/HD assets which have been working at "surge" capacity. We recognize that some of the most significant detractors to unit readiness are lengthy, frequent deployments. Once airmen return from deployments they require up to a 90-day reconstitution period, primarily for personnel training. Maintaining our AEF rotation schedule helps stability and predictability, but most of our stressed career fields are exceeding the 90-day goal. While the Air Force has taken steps to mitigate the impact of lost training, sustained operations will remain a challenge. As long as the current OPSTEMPO persists, we expect Air Force training to remain at current levels, if not decline, as training currencies and continuation training are harder to achieve.

Another concern is mid-grade officer and enlisted manning levels. We have a skill level mismatch: too many new apprentices and not enough experienced journeymen. The resulting imbalance means higher expectations for our less experienced airmen and greater stresses on the remaining mid-level leaders, managers, and trainers. We cannot afford to lose this experience; it will translate into lower readiness.

While there is clearly room for improvement, we are pleased with our recent gains in equipment readiness and are proud that we have maintained overall readiness despite increased demands.

Infrastructure. We continue to focus on existing infrastructure. The quality of our facilities and communities sends a direct signal to our men and women regarding the value we place on their service. We have accelerated our housing investment and expanded our privatization program. We will eliminate inadequate housing at all CONUS bases by 2007, except at four northern-tier locations where it will be completed by 2008. We will improve more than 3,600 units at 26 bases and support privatization of 7,000 units at seven bases. We also have an ambitious program to house our unaccompanied junior enlisted personnel. Committed to sustained improvements, the Air Force has increased this year's MILCON request by 20 percent. The Air Force has embarked on a strategy for three world-class depots and has increased funding for essential depot facilities upgrades and equipment modernization as part of our "Depot Maintenance Strategy and Master Plan." When you consider our level of effort across the entire infrastructure spectrum, we plan to invest more than \$4.4 billion in FY04.

Reconstituting our expeditionary basing capability is critical to our force projection capability. We have expanded our Afloat Pre-positioning Fleet capabilities, restructured Readiness Spares Packages, and repositioned assets to contingency sites. These recent investments will help address some of our shortages for bare base systems, vehicles, spares, munitions, and pre-positioning assets.

At the same time, the Air Force must dispose of excess infrastructure. The Air Force is working to prepare for the 2005 Base Realignment and Closure (BRAC) round which we need to fully achieve initiatives that could not otherwise be obtained. The Air Force is committed to meeting the statutory deadlines and ensuring our analytical processes are unbiased and defensible. We will continue to work with the local reuse authority at

each base closed under previous rounds of BRAC to minimize the impact on local communities.

Additionally, Air Force ranges are under increasing pressure from urban growth at a time when new weapons systems require more airspace. The Readiness and Range Preservation Initiative (RRPI) clarifies specific environmental statutes and protects Air Force access to training resources while continuing to protect the environment. By focusing on our principles of ensuring operational readiness, partnering with stakeholders, and protecting human health and the environment, we remain leaders in environmental compliance, cleanup, conservation, and pollution prevention.

Precision Munitions. With the advent of precision munitions, the Air Force has effectively transitioned from “one target, many sorties” to “one sortie, many targets.” Our use of precision munitions maximizes our combat capability while limiting the threat of collateral damage. They give us the ability to destroy targets in any weather, day or night -- they are critical to our success. Today, we have more precision weapons than ever. The Air Force will double its production capability for laser guided bombs this summer. To replenish our stocks depleted in operations over Afghanistan, we are currently producing 2,400 Joint Direct Attack Munitions (JDAM) each month for our air and naval forces and will reach a sustaining rate of 2,800 per month this July. We are effectively managing the procurement of both the bomb bodies and tail kits necessary for precision munitions.

Future Total Force. Like never before in the history of the Air Force, we are a Total Force. Mission success demands the interdependence of Active Duty, Air Reserve Component (ARC), civilian workforce, and contractors. ARC forces are essential to our

success; they comprise nearly half of the forces assigned to AEFs and contribute the majority of forces in some mission areas. We have begun to consolidate, when practicable, two or more components into a single wing with a single commander. We stood up our first "blended" wing, the 116th Air Control Wing, in October at Robins AFB, GA. This and future blended wings will leverage each component's comparative strengths to increase efficiencies, synergies, and capabilities. We have also used the Associate Unit concept for many years, placing Reserve members into Active Duty units for added stability.

Under our new steady state, the ARC will continue to assume more and more of the Total Force mission. As such, they need compensation, benefits, and entitlements commensurate with these increased responsibilities. We are working to facilitate seamless movement between the components by minimizing appointment and accounting burdens. We are exploring options to relieve surge stressors such as the use of civilian contractors. We are committed to using ARC volunteers versus mobilization whenever possible to allow the units and members the flexibility they need.

We are also closely monitoring ARC recruitment. Historically, the ANG and AFRC gain nearly 25 percent of separating Active Duty members. Continued high OPSTEMPO may threaten this source of recruiting and force the ARC to explore alternative options to make up the loss.

Summary. The greatest testament to Air Force readiness is our continued success in on-going operations to protect America from its enemies. We have the finest airmen in the world and are the most respected Air Force in history. We enjoy the confidence

of the American people and are committed to maintaining their trust. This record of success and promising future would not be possible without your support. For that, you have our deepest thanks. Our recruiting and retention success, dramatically improved maintenance rates, infrastructure improvements, and weapon system modernization are a direct result of your recent investments. We are especially grateful for your continued support for pay raises for our people. You share our conviction that adequate compensation is not a luxury but a necessity. Together, we have laid the foundation for continued dramatic improvements and further transformation. Let me assure you, your United States Air Force stands ready, whenever and wherever we are called.

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THE MILITARY READINESS
SUBCOMMITTEE OF
THE HOUSE ARMED
SERVICES COMMITTEE

STATEMENT OF
GENERAL WILLIAM L. NYLAND
ASSISTANT COMMANDANT OF THE MARINE CORPS
UNITED STATES MARINE CORPS
BEFORE THE
SUBCOMMITTEE ON MILITARY READINESS
OF THE
HOUSE ARMED SERVICES COMMITTEE
ON
MARCH 18, 2003
CONCERNING
READINESS

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THE HOUSE ARMED
SERVICES COMMITTEE

Introduction

Chairman Hefley, Congressman Ortiz, distinguished members of the Committee. It is my privilege to report to you today, on the readiness of your Marine Corps. On behalf of all Marines and their families, I want to thank the Committee for its continued support. Your commitment to increasing the warfighting and crisis response capabilities of our Nation's Armed Forces and improving the quality of life of our men and women in uniform is central to the strength of the Marine Corps. Your continued commitment to resource the equipping, training, and maintenance of the Corps enables us to remain the Nation's "Expeditionary Force in Readiness."

Operations

The Marine Corps maintains a global, expeditionary perspective, and we posture our forces accordingly. Our forces serve as a strategic deterrent, as an instrument of diplomacy, and as a demonstration of our National resolve to protect freedom wherever it is threatened. We are a transformational force that is affordable, scalable, sustainable, and prepared to respond across the spectrum of operations, from humanitarian assistance and disaster relief, to major conflict. Your Marines are trained and prepared to be first on the scene, first to help, first to fight and to serve as an enabler and nucleus for follow-on forces. Marine Corps operations throughout the past year have again highlighted the versatility, flexibility, interoperability, and expeditionary nature of our Service. Missions in support of Operations ENDURING FREEDOM and NOBLE EAGLE mark the most visible recent accomplishments of our forward-deployed units.

Your Marine Corps is organized as a "Total Force," with the Active and Reserve components serving and fighting as one. 214,558 Marines comprise the Total Force, with 175,000 in the Active Forces and 39,558 in the Reserves. Approximately, sixty-three percent of

our operating forces are forward deployed today in the ongoing Global War on Terrorism. They are operating in diverse locations, from Afghanistan to Kyrgyzstan, Uzbekistan, the Arabian Gulf, Southwest Asia, Jordan, the Horn of Africa, Turkey, Georgian Republic, Iceland, Guantanamo Bay, Colombia, the Philippines, and North East Asia.

In partnership with the Navy, we continue to maintain the Nation's only medium-weight forcible entry capability in the Marine Expeditionary Brigade (MEB). Recent experiences in the deployment of our units validate the inherent flexibility of our Marine Air Ground Task Forces (MAGTFs). MAGTFs can be task organized from available forces and scaled to meet almost any mission requirement, while remaining easily deployable and sustainable. In Afghanistan, we combined the combat power of two Marine Expeditionary Units to form Task Force 58 and added a headquarters, based on a MEB Command Element. We then projected these forces six hundred miles ashore into hostile territory. More recently, we demonstrated our ability to deploy amphibious MEB-sized forces from both the East and West Coasts.

Additionally, our Maritime Prepositioning Forces (MPF) again proved their viability and effectiveness. In February 2003, we rapidly offloaded two squadrons of our MPF – eleven ships within eighteen days. Further, the equipment coming off Maritime Prepositioning Ships Squadrons 1 and 2 had equipment readiness ratings of 98% and 99% respectively. MPF equipment is modern and 100% compatible with our active force, and once offloaded, it is immediately available for integration into a MEB-sized force. An MPF-MEB can then be employed as a stand-alone MEB, scaled down as a Special Purpose MAGTF, or combined with a second MPF-MEB as a springboard to a Marine Expeditionary Force. These experiences also reaffirm our requirement for a 3.0 MEB amphibious lift capability and our vision for future dramatic increases in amphibious – MPF interoperability.

We are currently engaged in a series of Sea Trial experiments with the Navy to enhance the capabilities of our Marine Expeditionary Units (Special Operations Capable) as part of a future Expeditionary Strike Group capability, while also exploring seabasing options. This demonstrated success by the Navy/Marine Corps team portends great success for the future of seabasing. Seabasing is much, much more than logistics. It will provide future forces the ability to maneuver from networked attack positions at sea; supported by major command and control elements, precision strike capability, and sustainment. We are proud of our successes and will continue to seek bold, innovative ways to test and develop them further in anticipation of emerging challenges.

The international security landscape is perpetually changing. Now more than ever, we are being driven to maintain a conspicuous force protection posture at all times. In the wake of the terrorist attacks of September 11th, our awareness sharpened, our training became more focused, and our antiterrorist and force protection efforts expanded. As a result, our forces were realigned to meet the challenges of a changing world and to support the National Military Strategy's "1-4-2-1" force shaping construct. We are task organized for success, well-trained, well-equipped, sustainable, and capable of performing missions at home or in the farthest corners of the world.

We will continue to prosecute the Global War on Terrorism, while preparing for what lies ahead in the 21st Century. We are moving forward with a vision for the future, and our FY 2004 budget request will serve us well in meeting current challenges, and will also allow us to continue making progress in addressing future challenges.

Marines and Their Families

The most advanced aircraft, ship, or weapons system is of little value without highly motivated and well-trained people to man it. People and leadership remain the real bedrocks of our Corps' capabilities. We have sought out and used better business practices to achieve greater cost-effectiveness, improved performance, and to permit us to focus on our warfighting core competencies. To that end, we have aggressively worked to reduce the number of Marines in non-core business areas and to date, have saved millions of dollars annually and returned almost 900 Marines to the operating forces. Further, we have optimized the use of military to civil service conversions and contractor support where appropriate; and will continue to search for additional ways to return more Marines to warfighting units.

The Marine Corps is by design a youthful service with sixty-seven percent of our entire force serving their first tour. Our recruiters work tirelessly to sustain our ranks with the highest quality young men and women. Due to their herculean efforts, we have met our accession goals during the past seven years for enlisted recruiting and the past twelve years for officer recruiting. Our recruiters established this record of excellence while maintaining our high entry-level standards, and they did so despite varying economic conditions and attitudes toward military service.

Retaining the highest quality Marines to lead our young force is a critical ingredient of our success. The Marine Corps has two enlisted retention plans – the First Term Alignment Plan and the Subsequent Term Alignment Plan. To date, both plans are indicating healthy continuation rates for our career forces at all levels. Military compensation, when competitive with the private sector, is a key factor in attracting and retaining talented individuals of the

highest caliber and character. At the same time, continuation pay allows us to target specific qualifications and skills, which greatly aids in their retention in the force. Officer retention rates are at an eighteen-year high, maintaining the strong performance of the last two years. Despite these positive trends, we cannot become complacent. Retaining aviators remains a challenge, and retention initiatives assist us in retaining sufficient quantities to fill our cockpits and other assignments with qualified naval aviators. Thank you for your continuing support to provide competitive compensation, health care, and retirement benefits – three areas that are critical to our recruiting and retention efforts.

While we recruit Marines, we almost always retain families – it becomes a family decision for a Marine to stay on for an entire career. The support of spouses, children and parents brings out the best performance in Active Duty and Reserve Marines, particularly when they are assured that all is being done to support their families at home when they must deploy overseas. We will continue to make every effort to improve the quality of life of Marines and their families. One method of accomplishing this goal is through improvements in housing and community service programs.

The Marine Corps owns or leases approximately 25,000 homes for Service Members with families. Of the approximately 23,000 we currently own, about 16,000 have been deemed inadequate. The FY 2004 budget will allow us to eliminate these inadequate units through Public Private Ventures (PPV) and traditional military construction by the end of FY 2007. This budget will also eliminate our housing deficit of approximately 5,100 units by FY 2009. Your continued support of your Marines and their families is greatly appreciated.

Because of our expeditionary culture, deployment support is provided to Marines and their families as part of our normal operations, largely through the efforts of Marine Corps

Community Services (MCCS). MCCS offers a wide array of family services, and support during the pre-deployment, deployment, and post-deployment phases of our deployment operations. The MCCS also offers numerous programs focused on new parent support and the prevention of domestic violence, as well as services and programs for infants, toddlers, children, teens, and exceptional family members. The MCCS has implemented similar support programs for our single Marines. The MCCS is working with our Marine Corps Reserves to strengthen the training and support for their family readiness programs as well. We are extremely grateful for your past support and ask that you support the quality of life programs in our FY 2004 budget request.

Training

We believe in the enduring wisdom, "train as you fight" and know that tough, realistic training is essential for success in combat. Our forces are well trained. We train as full members of the joint team, and over the past year, Marines participated in more than 200 service, joint, and combined exercises. These included live fire, field training, command post, and computer assisted exercises. Participation included both Active and Reserve forces and varied in size from small units to Marine Expeditionary Forces. Our FY 2004 budget request provides sufficient funding for both individual and unit training as well as for training munitions.

However, we believe our training would be more effective were it not for the increasing pressures of encroachment issues. Encroachment is one of the dominant readiness problems we will face in the 21st Century and it poses a serious challenge to our ability to train to the level of operational readiness required for combat. For the Marine Corps, endangered species issues are at the forefront of our encroachment concerns. Ever increasing urban and residential areas now surround Marine installations that were originally in rural locations. Our training areas often

provide excellent habitat for threatened and endangered species; serving as a natural oasis amid the expanding crush of densely populated urban areas. Pending environmental litigation could cause over 65% of Marine Corps Air Station Miramar and 57% of Camp Pendleton to be designated critical habitat.

The Marine Corps is conducting a series of quantification studies to assess the impact of encroachment on Camp Pendleton's ability to support the operational readiness training requirements of its tenant units. Current indications are that encroachment, coupled with the lack of clarity in administering existing environmental legislation, has restricted the Marine Corps' ability to train to the full spectrum of the units' core competencies by approximately thirty percent at Camp Pendleton, one of our major training facilities. This study will serve as a model to help quantify the impact of encroachment on all our major bases, stations, and ranges to support training. The Marine Corps is not asking to be exempt from this nation's environmental laws, but rather seeks some limited flexibility and clarification of certain issues under selected existing environmental laws. The Marine Corps supports the reintroduction of legislative clarifications for provisions not approved in last year's Department of Defense Readiness and Range Preservation Initiative that will enable our installations to fulfill their primary charter as a combat test and training center. Unimpeded access to our installations, with their air and ground training ranges, is critical to the Marine Corps remaining America's "Expeditionary Force in Readiness." Our ultimate goal is to "fight the way we train," while conserving the natural environment.

Infrastructure

The readiness of our installations is reported through the Commanding Officer's Readiness Reporting System (CORRS) program. Our recent standardization of installation

reporting procedures, which includes a more consistent and stringent reporting standard, resulted in a rebaselining of our readiness rates. The actual condition of our facilities has not changed, but their portrayal is now consistent and more accurate across the Corps.

Our bases and stations provide the launching platforms from where we train and project expeditionary power. They also serve as an essential link in supporting the family members left behind. Secretary Rumsfeld established several goals in Facilities Sustainment, Restoration, and Modernization (FSRM) for DoD installations. Our FY 2004 budget request addresses four primary goals in this area. The first goal is to eliminate inadequate family housing by FY 2007 through a combination of Basic Allowance for Housing increases, Public Private Ventures, and traditional military construction. Our plans and budget request are on track to achieve this goal. The second goal in the area of infrastructure is to improve the quality of our barracks. This budget supports the elimination of inadequate barracks by 2005. Our permanent waiver to build barracks to the "2 Marines per room with a shared bathroom" (2 x 0) standard, and the increased level of investment requested in the FY 2004 budget allows us to completely modernize our single Marine quarters by FY 2012. The last two goals are to fund our facilities on a sixty-seven year replacement cycle by 2008 and to attain a C-2 readiness rating in all facility-type areas by 2010. As currently budgeted, we will achieve our sixty-seven year goal by 2008 and attain C-2 readiness by 2013 – a significant improvement over previous years. Overall, our intent is to have an infrastructure that minimizes redundancy, maximizes efficiency, is cost-effective, environmentally sound, and capable of supporting our Marines, their families, and the training and exercises of our weapons systems and operational concepts.

Initiatives are on going for two essential facilities in Florida, which will directly contribute to the future readiness of our deploying forces – Blount Island in Jacksonville and

Eglin Air Force Base. Blount Island, a national asset, plays a vital role in the readiness of the Marine Corps' Prepositioned equipment embarked aboard Maritime Prepositioning Ships and will continue to do so for years to come. We must acquire Blount Island to ensure its availability for long-term national strategic use. This budget funds the second of two phases of our planned acquisition of Blount Island in FY 2004. Your support for this initiative will enable the Marine Corps to transform our Maritime Prepositioning Force into true sea based assets.

Eglin Air Force Base is currently undergoing an environmental assessment and study as a potential replacement for training previously conducted in Vieques. Eglin has the established training ranges, quality of training support, and proximity to the sea, which could potentially provide Naval Expeditionary Forces with the critical readiness training they need prior to deployment. Eglin's capabilities, location, and tenant commands provide the opportunity to facilitate joint training between Air Force, Navy, Marine Corps, Army and Special Operations Forces. Development of an expeditionary force training capability at Eglin will support the Secretary of Defense's vision and direction for training transformation and the development of a Joint National Training Capability. This type of training will be critical to Naval expeditionary force combat-readiness. The Marine Corps plans to execute two ten-day training exercises with a Marine Expeditionary Unit at Eglin each year. These exercises will include a variety of scenarios such as amphibious landings, raids, mechanized operations, helicopter operations, and live fire and maneuver exercises. Your support for both of these initiatives – the acquisition of Blount Island, and training at Eglin Air Force Base – is key to our future readiness.

Equipment

The Marine Corps' ability to deploy our combat ready forces and sustain them is due to the dedication of our Marines and the investments you have supported for equipment materiel

and spare parts. For much of the last decade, we deferred equipment modernization to maintain near term readiness. As a result, much of our primary equipment and weapons systems, such as the M198 howitzer, 5-ton truck, reverse osmosis water purification unit, CH-46E and CH-53D helicopters, and KC-130 aerial refuelers are rapidly approaching or have already exceeded, their programmed service lives. We have and will continue to take maximum advantage of Service Life Extension Programs (SLEPs), which enable us to improve the reliability and availability of existing systems, as we develop and field future replacements. Ultimately, investing in modernization and transformational systems will relieve us of the ever increasing resource expenditures — manpower and funding — required to ensure the maintenance and warfighting readiness of our aging equipment. Until then, our Marines will continue to maintain them in the highest state of readiness possible.

Our Marines are equipped and trained to operate in a chemically or biologically contaminated environment. Each Marine is protected by a Saratoga suit and M40A1 field protective mask as standard issue. Our Saratoga suits provide the same level of protection as the Joint Service Lightweight Integrated Suit Technology (JSLIST) suit, and we have sufficient stocks to issue three Saratoga suits and field protective mask filters to each Marine. Our forces have the ability to detect the presence of a biological agent on the battlefield, through the use of Portal Shield Detection Systems, Dry Filter Units and hand held assays. Our major installations and ground maneuver elements are also supported by specially equipped “Fox” vehicles, which are able to detect chemical agents in the atmosphere or on the ground. We also maintain chemical detection capability down to the unit level with Chemical Agent Monitors (CAM's), Automatic Chemical Agent Detection Alarms (ACADA's) and the Remote Sensing Chemical Agent Alarm. We are actively developing new technologies to perform large-scale

decontamination on personnel and equipment. If required, our forces will be ready and able to prevail in a contaminated combat environment.

Modernization/Transformation

Our modernization and transformation program efforts are vital to future readiness. The Marine Corps' major modernization programs include: the Medium Tactical Vehicle Replacement (MTVR), the High Mobility Artillery Rocket System (HIMARS), Lightweight 155mm Howitzer (LW155), and KC-130J aerial refuelers. There are many other modernization programs spread across all elements of the Marine Air-Ground Task Force. Transformation programs in this budget include: the MV-22 Osprey, the Short Take-Off and Vertical Landing Joint Strike Fighter, and the Advanced Amphibious Assault Vehicle (AAAV).

Our forces, when embarked aboard Naval expeditionary warships, provide the Nation with flexible, forward-presence, and deployed crisis response forces. They also provide a truly unparalleled expeditionary forcible-entry capability. As part of the joint Naval effort, the Marine Corps will remain capable of getting to the fight rapidly with sustainment to decisively deter or defeat adversaries who try to impose their will on our country or its allies. The Marine Corps supports the requirement for twelve LPD-17s and a modified LHD-8 ("Plug Plus") ship design in FY 2007 to replace existing LHA class ships. We will, through analysis of alternatives and on-going studies, evaluate the adequacy of the R&D and SCN funding for the development of ships for the LHA follow-on replacements.

Equally important to the modernization and transformation of the seabase, is the development of Maritime Prepositioning Forces. The leases of our current fleet of Maritime Prepositioning Ships (MPS) are slated for complete buy-out by FY 2006, prior to the expiration of their leases in fiscal years 2009 through 2011. Advanced Maritime Prepositioning

capabilities, High Speed Vessel platforms, and new lighterage vessels will significantly increase the strength and flexibility of our sea-based expeditionary forces. The marriage of a modern amphibious fleet with Maritime Prepositioning Ships, capable of hosting at-sea arrival and assembly of forces, will eliminate the requirement for access to secure ports and airfields, and give our Nation an unmatched asymmetrical advantage in projecting power.

In the field of logistics, we are re-engineering our combat service support to the Operating Forces. We call this transformation effort the Integrated Logistics Capability. It was created to improve the Marine Corps' logistics responsiveness, to reduce our logistical footprint ashore, and to provide the support needed to enable Operating Forces to respond to the full range of crises in the 21st century. To date, this effort is redefining and realigning supply, maintenance and battlefield distribution to integrate today's disparate and cumbersome processes.

As we continue to modernize and transform into a more capable Marine Corps, we acknowledge that transformation is an ongoing process and not an end-state. With your help, we are on a track that will result in the simultaneous arrival of a number of major programs. If realized, this will profoundly modernize and transform the Corps to dramatically enhance our ability to defeat America's prospective enemies.

Conclusion

As the Nation's premier "Expeditionary Force in Readiness," your Corps represents a certain force in an uncertain world. Our forces are postured and prepared for whatever missions they may be assigned by the President. They represent the current product of 227 years of expeditionary tradition, enabled by your strong support. We are constantly evolving our warfighting capability through continuous transformation, rigorous training and investment in

our Marines and their equipment. The transformational changes being implemented today are the legacy for the future readiness of your Marine Corps.

We are very grateful for the additional funding provided in the FY 2003 Omnibus Appropriations Bill. That funding provided a measure of relief to those programs, which are currently bearing the costs of the Global War on Terrorism. Thank you for your timely action. That said, our contingency requirements are significant, and they greatly exceed the funding provided. We request your continued support of our critical requirements, which enable us to give to you and the Nation, our eternal commitment to warfighting excellence. Thank you for the opportunity to present testimony on the readiness of the Marine Corps.

**QUESTIONS AND ANSWERS SUBMITTED FOR THE
RECORD**

MARCH 18, 2003

QUESTIONS SUBMITTED BY MR. HEFLEY

Mr. HEFLEY. The American Red Cross is unique among organizations in its relationship to the Armed Forces and the people of the United States. Under its Congressional Charter, it is entrusted to deliver emergency messages for military personnel and their families and to mobilize and deploy in support of the military through its Armed Forces Emergency Services (AFES). Although required by the Department of Defense, no budget line exists in the Department's budget request to pay for these core services. The Red Cross has had to seek support from Congress to help fund AFES.

Instead of relying on the charitable community and Congress to support AFES, is it your position that this program be funded by the Department of Defense?

General KEANE. The Army has no formal position on the appropriate sources or scope of funding for the American Red Cross (ARC) Armed Forces Emergency Service (AFES). We are aware of no internal Army request or requirement to re-locate ARC-AFES funding authority; thus, we believe that the Office of the Secretary of Defense (OSD) is the appropriate location for a comprehensive, answer to this question.

Admiral FALLON. I believe it is appropriate, whenever possible, that we support those who support our troops. Having said that, I think the only way we would be able to endorse DoD's assuming responsibility for funding AFES, would be with a requisite increase in appropriations above the President's Budget, particularly during this time of war. I understand that the annual cost currently runs close to \$60 million across DOD.

General FOGLESONG. The American Red Cross provides superb support to our military members and families through the AFES program. This program provides humane and expeditious assistance to military personnel and their families during times of need. Additionally, by allowing funding through public charitable contributions, it provides an important avenue for the public to actively support our military forces. Transfer of funding to DoD would eliminate public contributions as a funding source, and close a valuable means of public involvement in supporting our armed forces. We feel this important program is best administered and funded by the American Red Cross.

General NYLAND. The Marine Corps recognizes the valuable contributions of the Red Cross and their Armed Forces Emergency Services (AFES). They are but one example of the many privately funded organizations that provide quality assistance to military members and their families. We promote strong partnerships between organizations such as the Red Cross and Marine Corps Quality of Life programs such as those resident in Marine Corps Community Services, like the Key Volunteer Network. Key Volunteers are trained to refer spouses to the Red Cross in case of a verifiable emergency such as a death in the family. In addition, a family member can contact the Red Cross directly for assistance in relaying critical information to a deployed Marine if the key volunteer or family readiness officer contact information is not available. These services are vital to the families of deployed Marines.

DOD Directive 1330.5 outlines policies governing Armed Forces cooperation with and use of the services of the American Red Cross. This Directive authorizes the military services to provide support to the Red Cross without charge. This support includes: communication facilities, transportation and warehousing of supplies and equipment, custodial services, office spaces aboard military installations and utilities and building maintenance services. Additionally, under some circumstances Red Cross employees located overseas may be granted no-cost quarters, transportation, and access to military messing facilities, exchanges, commissaries, recreational facilities, medical facilities and dependent schools.

The Red Cross has been providing emergency services to the armed forces since 1905 without reimbursement from the DoD. The Marine Corps does not currently have the authority to reimburse the Red Cross for costs not covered in the DOD directive. The Under Secretary of Defense for Personnel and Readiness, USD (P&R) and the Under Secretary of Defense (Comptroller), USC (C) can authoritatively speak to the Department's position regarding a change in that practice.

Mr. HEFLEY. Additionally, is it your position that AFES is a vital service to military personnel and their families?

General KEANE. The American Red Cross (ARC) Armed Forces Emergency Service (AFES) program fits nicely into a wider mosaic of Army programs and projects that care for our Soldiers and their families. As a values-based organization, the Army welcomes all external programs and independent organizations that help our people and their families in times of need. In this context, Army Soldiers and families value the century-old contributions of the ARC and its AFES program. Consequently, and with the caveat that we remain unaware of any internal Army request or requirement to re-locate ARC-AFES funding authority, we trust that long-standing Red Cross services will remain available within that wider network of services that care for our most valuable organizational resource—our people.

Admiral FALLON. That's an emphatic, "Yes". The American Red Cross has provided this vital service for members of the Armed Forces and their families going back to the Spanish-American War. AFES is the only available and best means by which military commanders, operating anywhere in the world, can validate reports of death or infirmity within service members' families upon which to make informed decisions about whether to authorize emergency leave. AFES also is the source of much anticipated good news for service members such as the birth of babies back at home, contributing immensely to troop morale.

General FOGLESONG. We do agree that AFES is a very important service to military personnel and their families. AFES is service that is well established and known throughout the world. The service provides a personal touch to military members and their families at a critical time when speed of notification is critically important. However, funding for this program should remain with the American Red Cross and Congress.

General NYLAND. Yes. This service provides a vital link between military personnel and family members when family emergencies occur. Additionally, this notification is used as the authority to allow a military member to go on emergency leave.

Mr. HEFLEY. The Army intends to execute 913 tank miles in fiscal year 2004. The Office of the Secretary of Defense, however, did not agree with the Army on how much funding would be necessary to execute these miles. In fact, OSD reduced the Army's tank mile budget by \$148 million. How can the Army continue to support its claim to be able to execute 913 tank miles when there is a \$148 million reduction?

General KEANE. The Army will manage the risk resulting from the \$148 million reduction in the consumable supplies component of its operations tempo program. The reduction was based on OSD's analysis of Defense Logistics Agency prices relative to the Army's projected demands. While there is some uncertainty in this consumables estimate, the Army is committed to fully executing the approved training strategy. Execution year budget variances for consumable supply costs, if significant, will be addressed as mid-year review issues with the OSD staff.

Mr. HEFLEY. The Army will not be able to execute its flying hour goal of 14.5 hours per crew, per month. This is due to safety concerns, grounded aircraft, and spare part shortages. The subcommittee is aware that one action the Army is taking is to implement a new training program, referred to as Flight School XXI. When does the Army expect to see the benefits of this program and be able to execute a flying hour program of 14.5 hours per crew, per month?

General KEANE. First, let me assure the Chairman that the Army does intend to meet its FY04 flying hour goal of 14.5 hours per active duty crew per month. We continue to train to maintain readiness and remain committed to achieving goals established that assure readiness, like that of 14.5 flying hours per month.

It is true that achievement of this aviation flight-training goal is sometimes impacted by factors beyond the control of the unit commander. Those external factors include aircraft downtime due to Safety of Flight maintenance issues and, to some extent, transformation and deployments. Our recent history with these factors has led the Army to budget for the FY01-FY02 historical average of 13.1 hours per crew per month, with plans to internally finance up to 14.5 hours as the impact of these factors for FY04 emerge. Having said that, it is true that the Army is taking some small risk in the flying hour program for FY04. This risk, however, is prudent because it allows the Army to invest more heavily in depot maintenance and spare parts to reduce aircraft downtime. Clearly, the better we do at arresting potential aviation parts and maintenance issues, the better we will do at consistent execution of our flight hour training standard. Please be assured that we will closely monitor execution of the flying hour program in FY04 and make necessary adjustments to ensure that funding is not the reason for not executing the full 14.5 hour per month aviation training standard.

Implementation of Flight School XXI will enhance unit capabilities by providing better-trained aviators. Flight School XXI will achieve this result by assuring more aviator time in the cockpit of their primary rated aircraft, with less time in training-specific aircraft. Therefore, Flight School XXI will positively impact the quality of aviator training, even as it complements ongoing Army efforts with parts, maintenance, and deployment readiness issues to help assure the consistent execution of the established quantitative standard of 14.5 hours per crew per month.

Mr. HEFLEY. In your written statement you explain that current operations have disrupted planned maintenance on ships and aircraft. Please explain this statement further, and tell us how many ships and aircraft have not undergone planned maintenance or will not undergo planned maintenance in fiscal year 2003.

Admiral FALLON. Based on FY 2004 President's Budget, there are 86 Chief of Naval Operations scheduled ship availabilities funded for execution in FY 2003. Nine availabilities have been rescheduled to support operations, but they have not been cancelled. Based on current operational assumptions, 11 more availabilities are expected to change from the original scheduled dates. All but one are expected to execute prior to the end of the fiscal year, but some may be reduced in scope.

Twenty-six naval aircraft have been granted waivers (to continue flying, not to cancel the maintenance) because their required depot maintenance induction dates have passed (due to extended deployment in support of Operation Iraqi Freedom). Additionally, another 52 aircraft will require waivers during 3rd quarter, FY 2003, and 49 more will require waivers in 4th quarter, FY 2003, unless their deployments are curtailed. All of these aircraft will still require depot maintenance upon their return to CONUS; i.e., the depot maintenance requirement for airframes remains unchanged.

Mr. HEFLEY. The Navy is experimenting with a program referred to as Sea Swap—that is a new crew moves onboard a ship without that ship returning to homeport for maintenance. What have you learned thus far about this program and can you call it a success?

Admiral FALLON. Thus far our pilot program is a success. We conducted our first crew turnover in January of this year, with the crew of USS FLETCHER (DD 992) being relieved by the crew of the USS KINKAID (DD 965) down in Fremantle, Australia. We have learned that changing out a complete crew can be done safely and quickly. While there is a steep learning curve as the new crew settles into their ship, if proper training and preparation is done beforehand the obstacles posed by differing equipment configurations can be overcome. We have also learned that with prior preparation equipment reliability over the long term can be maintained. USS FLETCHER has not had any major material issues nine months after leaving homeport.

This first Sea Swap had a unique test in that 8 weeks after crew turnover, USS FLETCHER was engaged in combat operations during Operation IRAQI FREEDOM. Her new crew performed superbly, launching Tomahawk missiles during the conflict.

We will be conducting three more Sea Swaps this year to complete our program, and then we will be in a position to determine Sea Swap's future in fleet operations.

Mr. HEFLEY. Your written statement raises current restrictions on the use of overseas depot facilities. What are these restrictions and how are they impacting your readiness levels?

Admiral FALLON. 10 USC 7310 restricts our ability to maintain ships while forward deployed with the exception of voyage repairs. This statute prohibits pre-planned maintenance in overseas ship repair facilities. Recent experience with Sea Swap on USS FLETCHER (DD 992) indicated it would be difficult to expand the Sea Swap concept without modifying 10 USC 7310. Specifically, U.S. personnel were flown to the USS FLETCHER during transit time from the area of responsibility to the Sea Swap City to perform continuous maintenance and pre-planned work. Workarounds like this could be minimized with changes to 10 USC 7310 and possibly allow longer extended deployments. Modifications to the statute to allow planned maintenance overseas on extended deployments will:

- Lower operating costs and increase on station times with ships that are in better material condition.
- Increase the Quality of Life of Sailors, since fewer repairs will have to be performed by the Sailors.

- Produce fewer cascading and catastrophic failures, lowering voyage repairs.

Mr. HEFLEY. The Marine Corps is proposing to fund depot maintenance at 67 percent of its requirement. Please explain what maintenance requirements will be deferred and what will be the impact on readiness?

General NYLAND. Items whose maintenance is being deferred include the Combat Excavator, Recovery Trailer and Ribbon Bridge. While there is no apparent impact to immediate readiness, there is risk that equipment readiness in the future will decline if we continue to delay repairs. Additionally, by not rotating equipment through depot level maintenance, there is also a risk that future repairs will cost more.

QUESTIONS SUBMITTED BY MS. BORDALLO

Ms. BORDALLO. Admiral Fallon, could you update me on where the Navy is in the process of commissioning a new USS GUAM. I understand that the USS GUAM continued to serve the Navy right to the end, as it was sunk for target practice on October 16, 2002. Could you find out for me which of the new ships of the line now in production will carry the Guam name? May I suggest one of the new VIRGINIA Class guide missile submarines as an appropriate heir?

Admiral FALLON. Currently, there are no ships under construction that will bear the name Guam. The heroism of the Marines, Sailors, Soldiers and Airmen who fought on Guam during World War II is recognized. Naming a future warship in honor of their service will receive every consideration as previously communicated in H.T. Johnson, Secretary of the Navy (Acting), letter to Delegate Bordallo of 18 July 2003.

Ms. BORDALLO. The Navy is also doing an outstanding job of bringing force to bear in the Middle East. I understand that at last count 206 ships of the total 306-ship fleet are underway. The requirements of current operations must have severely disrupted the planned maintenance for ships and aircraft. I assume that once operations underway are successfully concluded, there will be a large surge in the ship repair workload.

Could you explain to the Committee what plans the Navy has in place to address this surge in repair work, having reduced ship depot maintenance accounts by \$600 million in FY 2004? Could you also inform the Committee whether the Navy plans to continue the repair of forward deployed Military Sealift Command ships in foreign ports rather than employing American labor? For example, I understand that the USNS YUKON is coming up for repair and that the Navy has asked for bids from Singapore, Korea, and Japan.

Admiral FALLON. The Navy budget submissions state our plan for ship maintenance execution at the time of submission. The FY 2004 ship maintenance budget supported 96.2% of our notional ship maintenance requirements. This percentage is slightly higher than the 95.5% funded in the FY 2003 President's budget. We were able to reduce ship maintenance funding in FY 2004 while budgeting to fund a higher percentage of the peacetime requirement for several reasons. The cyclic nature of ship maintenance contributed to a lower requirement in FY 2004; the requirement was reduced as we accelerated the retirement of our oldest, most maintenance-intensive ships; and finally, the reduced requirement directly reflects the benefits provided in the FY 2002 & FY 2003 supplemental appropriations.

The uncertainties associated with Operation Iraqi Freedom have made the FY 2004 ship maintenance plan more dynamic than usual. FY 2003 supplemental appropriation requests are being used to address the changes in the FY 2003 ship maintenance requirement.

In support of the National Military Strategy, and in accordance with Navy policy, the Military Sealift Command (MSC) intends to continue the use of foreign ports for repairs of forward deployed MSC ships, including USNS YUKON.

10 USC 7310(a) places restrictions on repairs of U.S. naval ships overseas. This law states that a naval vessel homeported in the United States may not be overhauled, repaired, or maintained by a shipyard located outside of the United States or Guam, other than in the case of voyage repairs. Navy policy implementing this law provides the following:

- Since MSC does not designate homeports, those ships that deploy overseas for periods exceeding two continuous years are considered homeported overseas. All other ships are regarded as homeported in the United States.
- Voyage repairs are corrective maintenance on mission or safety essential items necessary for a ship to deploy, to continue on its deployment, or comply with regulatory requirements. Further, voyage repairs do not include corrective maintenance actions that may be deferred until the next scheduled regular overhaul and dry-docking availability in the United States or Guam.

Navy policy seeks to optimize the use of the ship repair capabilities of United States and Guam shipyards. This is borne out by the following statistics:

- The current Navy list of MSC ships approved for repair by foreign commercial sources is comprised of 36 ships. Over the past 3 years (since June 2000), MSC contracted for a total 24 availabilities in foreign shipyards. Ten additional availabilities were accomplished in Guam. Given the substantial geographic dispersion of the MSC fleet, this reflects a consistent Navy commitment to maintaining a ship repair capability in Guam.
- Of these same forward-deployed 36 ships, over the past 3 years, 15 ships returned to the United States to accomplish major maintenance and repair work in the United States.
- There are approximately 40 other MSC ships covered by 10 USC 7310(a) that are not considered homeported overseas. For that reason, all maintenance and repair on them is accomplished in U.S. shipyards.

FISCAL YEAR 2004 NATIONAL DEFENSE AUTHORIZATION ACT—MILITARY CONSTRUCTION BUDGET REQUEST FOR PROGRAMS OF THE OFFICE OF THE SECRETARY OF DEFENSE, THE DEFENSE AGENCIES, AND THE ACTIVE AND RESERVE COMPONENTS OF THE DEPARTMENT OF THE ARMY

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
READINESS SUBCOMMITTEE,
Washington, DC, Tuesday, March 18, 2003.

The subcommittee met, pursuant to call, at 4:09 p.m. in room 2118, Rayburn House Office Building, Hon. Joel Hefley (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. JOEL HEFLEY, A REPRESENTATIVE FROM COLORADO, CHAIRMAN, READINESS SUBCOMMITTEE

Mr. HEFLEY. The subcommittee will come to order.

Today, the Readiness Subcommittee meets to hear testimony from the Department of the Defense (DOD) and the Department of the Army regarding the fiscal year 2004 budget request for military construction and family housing.

I want to welcome our witnesses, and look forward to their testimony.

Two years ago, witnesses from the Department of Defense testified before the subcommittee that the "fiscal year 2002 budget initiates an aggressive program to renew our facilities." It may be that at that time the witness believed that what he said would come to fruition. The sad truth, however, is that it has not unfolded in such a manner at all.

This year, the subcommittee has received a military construction and family housing budget request that continues the underfunding of real property maintenance and new construction—this has been the hallmark of the Department's stewardship of these programs for many years. While I have no doubt that each of the witnesses here today would like to be able to testify that all military construction and family housing requirements are met by this budget, the reality is that these requirements will be unmet again this year. Certainly, there are a variety of priorities that must be balanced in the national security arena. However, the trend is disappointing and once again requires congressional attention.

I would point out that this year's budget request is 14 percent smaller than last year's authorized level of nearly \$10.5 billion. Again this year, the Department is requesting merely \$9 billion for those important programs. The lack of adequate funding is high-

lighted by the fact that this year's DOD recapitalization rate is unimproved over last year, and in many of the services the rate deteriorates rather than improves. Clearly, the Department appears to be holding military construction investment in abeyance pending the next round of base realignment and closure (BRAC) in 2005. The funding projection charts across DOD show that only after the next BRAC in the 2006 to 2009 time period do real increases in infrastructure investment begin. I think that the budget projections in these years underestimate the likely costs we will face in new construction, modernization, and environmental remediation with any BRAC-related activities.

I do want to applaud the improvements in the adequacy of bachelor and family housing through the service's prudent investment and privatization efforts. Having personally visited with servicemen and women around the country, I know that these quality-of-life improvements are benefitting morale.

By the Department's own admission, as much as 68 percent of the service's facilities are rated C-3 and some C-4, an appalling state of readiness that detrimentally affects morale, efficiency, and the prudent management of critical infrastructure. The delay in investment in this infrastructure simply makes the problem more expensive in the outyears.

As my predecessor, Mr. Saxton, remarked last year, "this subcommittee will not turn our backs on the need to modernize crumbling infrastructure for several years until the results of base closure are known." I am totally committed to very closely scrutinizing the military construction and family housing budget request that has been submitted by the Department of Defense. Our brave servicemen and women deserve safe, habitable, efficient, and well-sustained facilities in which to live and work. We owe it to them to be diligent and prudent in this endeavor.

I do not doubt the good intentions of those who appear before us to testify today. I do, however, want to impress upon you that I expect you to work with us in improving upon the budget request we have received.

At this time, I would like to recognize my good friend from Texas, the distinguished ranking member of the Readiness Subcommittee, the Honorable Solomon Ortiz, for any statement he would like to make.

STATEMENT OF HON. SOLOMON P. ORTIZ, A REPRESENTATIVE FROM TEXAS, RANKING MEMBER, READINESS SUBCOMMITTEE

Mr. ORTIZ. Thank you, Mr. Chairman.

I join you in welcoming all our distinguished witnesses today to the Readiness Subcommittee hearing on the fiscal year 2004 budget request for military construction and family housing. I know this important hearing is being held at this hour in the afternoon due to the committee's very, very tight scheduling constraints, so I will try to keep my statement as brief as possible.

I have reviewed the budget request, and I wish I could say that I am satisfied with the budget that our witnesses will discuss today, but I am not. Just as it did a year ago, the Defense Department is short-changing the military construction and family hous-

ing accounts. Last year, for the fiscal year we are now in, 2003, the Department requested just under \$9 billion. Congress, on a bipartisan basis, considered the request inadequate and provided about \$10.5 billion for military construction and family housing. In response to the September 11th attacks, this funding included about \$700 million for one-time-only force protection projects. Still, that means that Congress provided about \$9.8 billion for regular military construction and family housing projects for the year 2003. This year's request is again only \$9 billion. This is a cut of almost 8 percent from the 2003 level even if the one-time-only force protection projects are not included. I strongly believe that we should be increasing, not cutting, funding for military construction and family housing.

I think all of the members of this subcommittee will agree the need for military construction and family housing is obvious at virtually every base in this country. About two-thirds of our military facilities are either rated C-3, which means they have serious deficiencies, or C-4, which means that they do not support mission requirements. We cannot solve this problem with more sustainment funding—this is just putting our fingers in the backlog dyke. We need to build more facilities to overcome this problem.

I particularly think family housing has to be addressed sooner rather than later. If we are asking our men and women in uniform to risk their lives on the global war on terrorism and in any action we are about to take in Iraq, the least we can do is to make sure their families are not living in inadequate and even unsafe housing.

I know that our witnesses are not to blame for this problem. They care about our infrastructure and the quality of housing for our military personnel and their families. They do the best they can with the dollars that they are given. But I do not think the Department as a whole should keep underfunding those important accounts until after the 2005 BRAC round. It is not good for readiness, and it is not fair to our men and women in uniform and their families.

The Department's long-term budget plan for future years, the Future Years Defense Plan (FYDP), thus contained funding increases after 2005, what is known inside the Beltway as outyears. But I think I have been in Congress long enough to know that the outyears always seem to be in the future. We need to start increasing this funding now and not wait for outyears that exist only on paper.

Mr. Chairman, I am also interested in hearing what witnesses have to say about how the housing privatization ventures are progressing in the work the Department and the services are currently doing to get ready for the 2005 BRAC round. In order to expedite this hearing, Mr. Chairman, I will stop; and hopefully we can continue with our witnesses.

Mr. Secretary, welcome.

Mr. HEFLEY. Thank you very much, Mr. Ortiz.

We are going to have two panels today; and, again, because of time constraints, we have to be out of this room by 6 o'clock. I would ask the witnesses to limit their testimony to five minutes. There will be plenty of opportunity during questioning, I am sure.

I would ask the members to limit your questioning, too, so that your questioning and the answer can be brought within the five-minute time limit so everybody gets an opportunity to ask the questions they would like to.

Our first panel will be Mr. Raymond DuBois, Deputy Under Secretary of Defense for Installations and Environment, to talk about the budget overview and the defense-wide programs. Then, the second panel will be composed of members of the Department of the Army.

Mr. DuBois.

STATEMENT OF HON. RAYMOND F. DUBOIS, JR., DEPUTY UNDER SECRETARY OF DEFENSE, INSTALLATIONS AND ENVIRONMENT

Secretary DuBOIS. Thank you, Mr. Chairman.

On behalf of Secretary Rumsfeld, I am pleased to appear again before this subcommittee to discuss the President's budget for fiscal year 2004, and specifically the military construction budget.

I think, however, it is important to note at the onset of a hearing such as this that, by definition, will focus almost entirely on military construction, the authorization, and appropriation thereof, that we understand what Secretary Rumsfeld has adopted in terms of a different way of approaching and investing in what we call our installation and environment portfolio, or, as is often referred to, as the quality-of-life portfolio.

It is more than military construction and family housing. It is also things such as utilities and energy management. It is safety and occupational health funding. It is environmental funding, cleanup and conservation programs. It also includes contributions from other appropriations accounts, such as the military personnel account, the working capital funds, the operation and maintenance (O&M) account, the research and development (R&D) account, host nations support, and nonappropriated funds.

Now, with this definition in mind, that is to say, a broader definition than is normally accorded to the military construction or the installations and environment (I&E) portfolio, the fiscal year 2004 budget request in support of the total Department of Defense installations and environment portfolio is in actuality nearly \$20 billion. If you add base operations support, which is an enormous number in and of itself, yes, out of the O&M account, you are closer to \$40 billion. In short, one should not judge the quality-of-life investments solely on military construction (MILCON) appropriations.

Now, one of the cornerstones of that portfolio is, as has been mentioned before, our investments in housing, housing for our military families. We all remember that President Bush and Secretary Rumsfeld identified military housing as a top priority in the beginning of this Administration. To that end, we employ a three-pronged approach: one, increased basic allowance for housing; two, increased housing privatization; and, three, sustained military construction for housing.

The fiscal year 2004 budget request includes necessary funding to continue lowering out-of-pocket housing costs for our military families living off base from 7.5 percent in 2003 to 3.5 percent in

2004; and, by 2005, the typical member living in the private sector will have zero out-of-pocket expenses.

We believe our housing privatization efforts have gained traction and are achieving success. Privatization awards in fiscal years 2003 and 2004, the cumulative total will achieve about 102,000 units privatized by the end of 2004.

Now, military construction is extremely important. It is another tool for resolving inadequate military housing, and in this budget we are requesting \$4 billion in new budget authority for family housing construction and operations and maintenance. This funding will enable us to continue O&M and modernizing the Department's family housing and helping to meet our goal of eliminating all inadequate housing by 2007, which, as you know, is a three-year-earlier objective than previously planned.

Now, we are also focusing on improving the work environment and, thus, the readiness of our military through proper facilities sustainment and recapitalization. Full sustainment improves performance, reduces life-cycle costs, and maximizes the return on our capital investments. We must repair and replace facilities before they have become deteriorated. If we do not do that, repairing and replacing those facilities once they have become deteriorated is much more expensive. We are requesting \$6.4 billion for sustainment in the O&M appropriation, not the MILCON appropriation, funding sustainment at 94 percent of the standard commercial benchmarks.

But sustainment, as you have pointed out, Mr. Chairman, alone is not enough. Well-sustained facilities eventually wear out and become obsolete. We have a number of facilities in that condition. So we must restore and modernize them. Some of this recapitalization is critical and cannot wait. Our request of \$3.4 billion for restoration and modernization maintains our commitment to improving the work environment, while weighing the requirements against other Departmental priorities. The Future Year Defense Plan—the 5-year defense plan funds restoration and modernization to achieve a 67-year recapitalization rate by our goal of 2008.

We discussed in a previous hearing, the environmental programs that we are working on, and our request of \$3.8 billion will continue our efforts in environmental compliance and stewardship.

As I indicated, the Readiness and Range Preservation Initiative, which we have discussed before this subcommittee at some length, is crucial we believe to sustaining our training ranges and our testing ranges. We again ask for your consideration for the other provisions in the Readiness and Range Preservation Initiative which were not adopted last year, and we believe that the modest legislative reforms are needed.

Mr. Chairman, your opening statement and certainly that of Congressman Ortiz represent a very clear articulation of the complexities and challenges we face. There are competing priorities. But as managers of the DOD I&E portfolio, myself, Dr. Fiori, H.T. Johnson, and Nelson Gibbs, it is a—shall we say, a battle that we fight every day. We are champions of that I&E portfolio, but there are competing priorities. We do look forward to working with you, and we do need your help to address this challenge.

Thank you, sir.

Mr. HEFLEY. Thank you very much.

[The prepared statement of Secretary DuBois can be found in the Appendix on page 395.]

Mr. HEFLEY. Solomon, with your permission, I would like to call on a couple of people who sat through most of the previous hearing and didn't ask a question to see if they would like to ask.

Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. DuBois, thank you for your testimony. I noticed on your written statement you had mentioned that obsolete facilities pose risk to mission effectiveness, safety, quality of life, productivity, workforce, and cost efficiencies. Can you tell me—I take it from that that you have made a determination that we have obsolete facilities that exist out there. Is that correct?

Secretary DUBOIS. Obsolescence comes in varying forms. But you are correct, Congressman, there are obsolete facilities out there, especially when you are introducing new weapons systems to our inventory.

One can say that a hangar built for a particular aircraft that entered our inventory 30 or 40 years ago is not the hangar that we need today. Is that hangar still useful? Yes. Is it obsolete? It is only insofar as one says it has to be used for the F-22, a new aircraft yet to enter the inventory.

Mr. FORBES. Have you created a definition of obsolescence that you use as a benchmark to try to determine what obsolete facilities are?

Secretary DUBOIS. As I indicated, the hangar is a good example. Pier space—if pier space for a new ship is not long enough, not high enough, it could be deemed to be obsolete. These are the—I am trying to think of some other examples. But those are the two that come to mind.

Yes, there are obsolete facilities. Class A office space that might have been used in the 1950s or the 1960s and properly sustained is still Class A office space today. But, as we are seeing in the Pentagon, a building that is over 50 years old, it is in essence obsolete, but it is still useful. Therefore, with your appropriation—your authorization and appropriation, we are rebuilding from scratch the Pentagon in five wedge sections. Yes, it is a multi-billion dollar operation but one that had to be done. Not just in terms of safety. There were no water—fire devices in the ceilings, for instance. The new communications that we use in the Defense Department, all of that needs to be laid into the new parts of the Pentagon.

Was it obsolete? Yes. Was it useful? Yes. Are we going to have a modern building with another 50-year life when we are finished? Yes.

Mr. FORBES. Again, not to push the point, but just for clarity on my part, do you have a definition of what an obsolete facility is that you either can give me now or tender to me at a later time just so I have it clear in my mind?

Secretary DUBOIS. If there is a definition in the DOD directive, I will certainly send it to you.

[The information referred to can be found in the Appendix beginning on page 455.]

Mr. FORBES. Okay.

The second thing is, sometimes obsolescence may be like obscenity, we know it when we see it. Can you give me the names of any facilities that you deemed to be obsolete so that I just have a touchstone that I can measure that by as well, if you have a listing of that?

Secretary DUBOIS. As I indicated, perhaps the best known symbol of the world for the Department of Defense is the Pentagon. The Pentagon is obsolete. It continues to be useful, however. The Secretary of Defense still operates there. But one-fifth of that is building is now no longer obsolete.

There was a time when the Congress and the Executive Branch discussed getting out of the Pentagon altogether and building an entirely new command center for the Secretary of Defense and the Joint Chiefs. It was deemed, however, better use of the property to upgrade it, rebuild it. So, today one could say four-fifths of the Pentagon is essentially obsolete. One-fifth is, however, not, because it has been totally rebuilt.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Marshall.

Mr. MARSHALL. I will wait until later in the questioning. Thank you, Mr. Chairman.

Mr. HEFLEY. Okay.

Mr. Ortiz.

Mr. ORTIZ. You know, while a base closure round is authorized for 2005, actual base closing will not occur for, I guess, several years after that. Military construction funding is projected to increase to \$15.5 billion in fiscal year 2006. However, \$3 million of that increase is intended for BRAC implementation, and only \$2 billion is considered new funding.

Why are the actual projected increases in military constructions so low, and how large do you expect the BRAC round to be? When can DOD expect to see savings rather than the cost associated with the pending BRAC round? And how would you explain the large reduction in the fiscal year 2002 BRAC-related environmental remediation program? Does this demonstrate a lack of commitment to protecting the environment on the part of the Department?

These are questions that my constituents also ask, you know. Of course, we are able to look at the budgets years before they do, but maybe you can enlighten me on some of these questions that I just asked, Mr. Secretary.

Secretary DUBOIS. Mr. Ortiz, the relationship between military construction requests and BRAC certainly stand out there in stark relief to other aspects of the defense budget.

I think I want to begin by answering your very important question by answering one that perhaps is a subtext to your question; and that is, I have often been asked whether or not we have deferred projects by virtue of BRAC or by virtue of the impending BRAC. The answer is no. No projects were deferred because of the impending BRAC. There is no list of deferred projects, and we have not instituted a so-called military construction pause.

Now, the projected increases in military construction, the budget request and I think the associated FYDP is, in our view, consistent with our plan to achieve that 67-year recapitalization rate that I spoke to by fiscal 2008.

Now, you asked another important question: How large do you expect the BRAC to be? I testified two years ago during the cycle whereby we—the President asked and the Congress approved a BRAC authorization, another BRAC authorization, that there had been a report in 1998 which indicated that there was excess capacity in the Department of Defense—excess capacity, not excess installations—of some 20 to 25 percent. Will the BRAC 2005 reduce the excess capacity by 20 to 25 percent? We don't know that until we get to the other end of this process which is two years out.

I think that it is true that both the Secretary of Defense and I have indicated that we believe through joint utilization of basing, by virtue of the fact that there is excess capacity, that we can achieve something in the range of reduction of that amount.

Now, there is another issue that exists today that did not exist two years ago when I testified on this issue. That is, the Secretary has made it very clear that when we look at the worldwide responsibilities that we have and our warfighting plans, we have a 21st century warfighting set of obligations and responsibilities, and we have arguably a Cold War legacy infrastructure, especially overseas. It is absolutely true, as many of you have reminded me, that until such time as the Secretary of Defense and the Joint Chiefs and the combatant commanders assess their needs overseas, we cannot truly make intelligent decisions about domestic BRAC, that is to say, realignment of the installations in the U.S. and its territories.

To that end, the Secretary of Defense, in discussions with the combatant commanders and the Joint Chiefs and the service secretaries, has agreed that 2003 and 2004 MILCON projects, those that were authorized and appropriated in 2003 and those which we have submitted with the President's budget in 2004, arguably on the basis of plans that were developed two and a half and three years ago, might need to be changed. In that regard, we will ask for a budget amendment prior to your markup, which I believe is in the month of May. This is a very important issue, and I know how the timing is very critical. That is an immediate problem or an immediate challenge.

The longer term challenge, which many of you have, as I said, reminded me of is, what should our overseas basing structure look like in the 10-plus-year-out category? Because only then can we determine what should be the domestic infrastructure. It may turn out that what had been anticipated two years ago or three years ago is not what will be the end result in the spring of 2005 when the Secretary of Defense reports to the BRAC Commission.

Mr. ORTIZ. I have been able to see the deficiencies in housing and the workplace, the depots and—but if we continue to contract out all these jobs, of course we are going to have excess capacity. I hope that is not the case, that we contract out as many jobs as possible. Then, of course, when I see that one contractor is assigned to every 10 military personnel, this worries me.

I hope that some day we will be able to see how much we have saved.

I know there are a lot of other members that need to ask questions, and I thank you for now, and I hope that maybe I can include some questions for the record, Mr. Chairman.

Mr. HEFLEY. Surely.

Mr. ORTIZ. Thank you, Mr. Secretary.

Secretary DUBOIS. Thank you.

Mr. HEFLEY. Mr. Hayes.

Mr. HAYES. Thank you for being here, Mr. DuBois.

You are doing a great job at Fort Bragg and other posts with the Residential Community Initiative (RCI) and privatized housing. As a result of that, good things are happening, better housing.

An unanticipated problem is, in the case of Fort Bragg, our DOD school. We cannot, we must not use MILCON money to solve that problem. Eight hundred and forty-two new students will be introduced on the base because of the initiative. How are we going to provide the schooling, which is vitally important, without taking the money from the MILCON budget?

Secretary DUBOIS. Mr. Hayes, I don't want to avoid your question, but I will answer it this way, in two parts:

One, Dr. Fiori follows me; and, as Assistant Secretary of the Army, he is much better versed in the particulars of schooling at Fort Bragg than I am. But I will say this, the authorization for RCI or the authorization for military family housing privatization does not prevent using the privatization process to provide, where necessary, construction of schools. This is an important aspect. If the Army decides that that is the best way to provide for more classrooms for the—by virtue of the introduction of more children on that post, they will come to that conclusion.

I do not, as Deputy Under Secretary for Installations and Environment, play in, as it were, that particular sandbox. That belongs to Dr. Chu, the Under Secretary of Defense for Personnel and Readiness. But I am aware of the concerns. The Army has voiced them to me. I have tried to become a broker between the Army and Dr. Chu in this regard.

But I will say this, I visited over 90 military installations since I was sworn in on this job now almost 2 years, I guess. There are three things of interest to every military family. In fact, they are the same three things that are of interest to every American family: health care, housing, and schools. I try to find out every time I visit an installation what the state of play is in those three arenas.

Mr. HAYES. Thank you, sir.

Dr. Fiori has been very helpful, and he is looking, he is looking hard; and I am confident he is going to come up with it.

The other question is, it has been a very aggressive A-76 privatization study procedure, an awful lot of things going on around the country as it relates to additional requirements on our bases. Fort Bragg is processing Guard and Reserve folks, deployments, all these kinds of things.

Update the panel or update the committee here on your thoughts of how effectively are we pursuing the A-76 procedure and do we need to reorient our thinking while we have the pressures coming from the Middle East right now and take some of that stress off of our folks at Fort Bragg and similar installations?

Secretary DUBOIS. This does have a relationship to Congressman Ortiz's question, and it is a complex question.

Let us face facts, I believe this subcommittee is going to address the A-76 circular revisions that have come out of the commercial activities panel. Pete Aldrich, the Under Secretary for Acquisition, I think is testifying to that end. But there are two things that I think are important to recognize.

After 9/11, the Secretary of Defense stated in a memorandum—and I am not sure whether he signed it or Pete Aldrich; nonetheless, it is on behalf of the Secretary of Defense—that there was an A-76 project under way or about to be under way that, in the opinion of the installation commander, would negatively impact his ability to perform his mission as the operations tempo (OPTEMPO) increased. He would be given an opportunity to stand down in that regard. So there is a way, if there is a military mission degradation impact, to address that.

Number two, as I indicated, the commercial activities panel has concluded and reported what revisions, by virtue of the fact there were people in the private sector who didn't like the A-76 process, there were people in the public sector who didn't like it. Now I think that we have come to some changes that will address some of the most critical concerns. That report is, I believe, out; and I believe that there will be a hearing specifically on it with David Walker, the Comptroller General; Angela Styles from the Office of Management and Budget; and Pete Aldrich from the Department of Defense.

Mr. HAYES. Thank you, sir. Keep an eye on your accounts and make sure that we have real savings in wave one and two before we wave over to three, and keep the pressures off the guys. Let them do what they need to do. Thanks.

Mr. HEFLEY. Mr. Taylor.

Mr. TAYLOR. Secretary DuBois, thank you for being here with us today.

I am curious, using the example of the F-18, E and F, and the need for our new East Coast base, have you budgeted how much it is going to cost to replace Cecil Field? This ties in with your comments about maybe we ought to take a look and see whether or not these troops are coming back from Korea before we make some decisions. Because that clearly was a case where someone was not looking ahead. Keeping in mind that the Joint Strike Fighter follows after that, what are we going to spend to replace the bases that have already been closed?

Secretary DuBOIS. Mr. Taylor, of course the closure of Cecil Field happened—I don't know whether it was the 1993 or 1995 round. I can't address whether that is a decision that the Navy would like to walk back or not.

We do have new basing requirements for the F-18, FA-18 Es and Fs. We will have new basing requirements or basing requirements for the F-22 and the Joint Strike Fighter.

You are absolutely right if the implication of your question is, as we go through a BRAC process, keeping in mind which current bases can handle them, which current bases need to be expanded, which bases will the F-16 and F-15 depart the inventory to be replaced by these new aircraft? These are Navy and Air Force particular military operational questions that will be addressed within those services in the BRAC process.

But if the implication of your question is, must we consider where new aircraft, new types of aircraft will go, you are absolutely correct. I cannot, however, address the issue of Cecil Field and why it was recommended or not.

Mr. TAYLOR. For the record, I would very much like the Navy's estimate of what it is going to cost to build the new east coast base; and I am talking about everything from the family housing, barracks, runways, everything associated with a base that—in fact, building a base from scratch to make up for the one that was given away.

Secretary DUBOIS. I will discuss this tomorrow with H.T. Johnson.

[The information referred to can be found in the Appendix beginning on page 452.]

Mr. TAYLOR. Secretary DuBois, the second thing that—and I am sorry my colleague, Mr. Abercrombie, isn't here—several representatives of the Administration talked about excess capacity and yet I have yet to see a representative of the Administration identify one base by name that they consider excess, would you be willing to do that today, sir?

Secretary DUBOIS. No, Mr. Taylor. I think it is important to recognize and in the discussions that have occurred over the last two years that the only way that we can honor Congress' method—Congress' methodology for base realignment and closure is to be as comprehensive as possible to address all installations equally.

There is no question that some installations—and each one of you can name them—are installations that probably will not be BRAC'd. My father went to one of them. But the fact of the matter remains we do not know what the true rationalization can be if, for instance, there was some kind of a list that was set on the table and not to be addressed from the beginning, especially from the point of view, were there to be such a list, would those installations, for instance, not be receiving installations?

I think it is important, as I have been asked when I travel around the country by mayors and governors and city councilmen and so forth. The issue is, can your installation be a receiving installation? What are its capacities to grow?

I don't know the answer to that question at this time. My successor or the Secretary of Defense in the spring of 2005 will make those recommendations to a BRAC Commission. But I think it is important that we look at all bases equally, that all bases are required to submit their data, if you will, a data call so that no base is put in jeopardy unnecessarily. All bases are on the table.

Mr. TAYLOR. Your remarks about the potential return of troops from Korea led me to believe that you might be willing to accept a postponement. But my other thought—

Secretary DUBOIS. Postponement of what? I am sorry?

Mr. TAYLOR. Postponement of a BRAC process, or should we go forward with it? And if we are going to go forward with it, what would be your reaction to possibly setting a deadline for the BRAC list to be published on October 1st of 2004?

Secretary DUBOIS. The Secretary of Defense and others have made comments about the possibility of realignment of forces on the Korean peninsula. I think he has also indicated publicly that

any realignment of those forces is going to be a process not done quickly, on the one hand.

On the other hand, the Secretary recognizes that if he does not address force structure overseas and infrastructure overseas at some point in the next year and therefore intelligently inform the domestic BRAC process in the 2004 calendar year, which is the 12-month period I suspect most of the heavy lifting will be done, i.e., can he, the Secretary of Defense and the Joint Chiefs, have some definition around what our overseas presence and our overseas basing strategy ought to be in the 10-plus year out category sometime in this fall?

I think he can. He has indicated to me that I am to work with the combatant commanders and the Joint Chiefs in the military departments to come to some definition with respect to overseas basing.

Will that call for the return to the United States of force structure, be it ground, air, or sea? I don't know the answer to that question.

I did hear earlier today when I testified in the Senate a remark made that the Secretary had made a decision to withdraw from Korea. That is absolutely incorrect. He has not. He did not make that comment. The only comment he made was, does it make sense now to pull back some of our U.S. Army forces, our ground forces, U.S. military ground forces, from close to the demilitarized zone? He didn't talk about them being pulled out of the peninsula.

Mr. TAYLOR. Mr. Chairman, just a quick follow-up.

Mr. HEFLEY. Very quick.

Mr. TAYLOR. I was curious. You did not express your thoughts on whether or not maybe the timetable should be moved up to publishing the BRAC list on October the 1st of 2004.

Secretary DUBOIS. I don't think that either we will be ready to do so or, quite frankly, Congressman, would it be advisable to do so.

Mr. TAYLOR. Would that have something to do with a presidential election in November, 2004?

Secretary DUBOIS. I leave that up to you, sir.

Mr. HEFLEY. Ms. Wilson.

Mrs. WILSON. Thank you, Mr. Chairman.

Mr. DuBois, you mentioned that this is Congress' BRAC process. I just feel compelled to remind you that the House did not support another round of base realignment closure in the last move through the authorization bill, and there was a reason for that. One of those reasons was the very weak analysis supplied by the Department of Defense that money has been saved during the last five rounds of base realignment and closure.

I am one that believes that strategy should drive force structure, and force structure should determine basing. And I did not believe and still have not seen good, solid analysis in numbers about the savings, setting aside the problems of rebuilding facilities that maybe people want to reconsider or walk back closure on.

I also think it is important to remember some of the history here and that this process comes from an effort to take base structure out of the realm of political favoritisms and to try to make sure

that it is driven by the needs of the military. So this idea that somehow this is an ugly creation of the Congress doesn't wash.

I also would like to ask you a couple of questions. A couple of years ago you came to my office and said that you could not provide estimates of the savings of base realignment closure compared to what was projected to have been saved at the time the proposals were made in the rounds that we have gone through. And I asked several times, not directly to you but to DOD folks, whether you had come up with the estimates, estimates that didn't exclude environmental management costs or caretaker costs; whether you had been able to locate the original cost estimates that were given for closure which DOD couldn't find initially. Do you have any numbers or a spreadsheet for us yet?

Secretary DuBOIS. I will answer that question, Congresswoman, in two parts.

Number one, the General Accounting Office (GAO) in a report was quite clear that the estimated savings derived from prior BRACs was legitimate and real, and they even went so far as to say the amounts. We have estimated that annual savings occurring every year now from the four prior BRAC rounds is approximately \$7 billion a year. As I said, GAO confirmed that. I thought that I had sent that report to you; and, if I haven't, I certainly will.

The "weak analysis," to use your term, in our view is not weak. It has been corroborated by outside organizations, that is to say GAO, and I believe the Institute for Defense Analysis also. The issue which is probably the one that is used most often to criticize the Department's analysis and estimates, is the issue of cost for environmental remediation. We have spent to date some \$7.5 billion on environmental programs pertaining to BRAC, the majority of which has been spent on cleanup. It is estimated at this time that the cost to complete is somewhere in the vicinity of \$4 billion to \$4.5 billion.

Why does that number not in a nice, neat, linear fashion reduce year by year? In no small measure, Congresswoman, because of the many acres yet to be disposed of. Local competing environmental and economic interests change land use policies that, therefore, change the cost to clean up. There is no doubt, even with the cost to complete that we estimate now of \$4.5 billion at an annualized \$7 billion a year savings, we are ahead of the game.

Mrs. WILSON. Mr. DuBois, I am looking at some quotations from—I assume you mean the GAO report of 1998, which, of course, is quite dated now. But I don't see it as unconditionally confirming DOD's analysis. Maybe there are some things I don't understand here.

And I quote, "DOD's data systems do not capture all savings associated with BRAC actions, nor has DOD established a separate accounting system to track BRAC savings."

It went on to find other significant findings.

I have one final question that I wanted to ask you. The selection criteria for the 2005 closure or realignment due to be published on December 31st, 2003, there are reports within the legislation that authorize in the next round some guidelines or some general guidance provided by statute; and I think there is some concern that the statute aligns with what DOD is beginning to think of. Is it the

Department of Defense's intention to consult with Congress when crafting guidelines to ensure that they align with the statutes before they are published on the 31st of December?

Secretary DUBOIS. My understanding, Congresswoman, is that the legislation requires the Secretary of Defense to publish criteria by December of 2003 for public comment and for deliberation and dialogue with the Congress; and, based on that, the criteria may be changed and resubmitted. As you pointed out, the criteria in the legislation has been well defined.

I have been asked if the criteria will be weighted. Now, the legislation makes it very clear that military value shall be the primary selection criterion; and I haven't heard anything from anyone that would lead me to believe that that ought not be the primary criterion.

If you are—

Mrs. WILSON. Mr. DuBois, I need to interrupt, because I see my time is out. But do you intend to informally consult before the 31st? Or will the 31st of December be the first time that members of this committee see your draft?

Secretary DUBOIS. Speaking for myself—and, obviously, I have got to go to my boss to cover this with him. But I would see it very valuable were I to come and consult with you prior to the publication of that criteria.

Mrs. WILSON. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman.

Welcome, Mr. Secretary. My question deals with an article that appeared in the Washington Post yesterday, it said that Secretary Rumsfeld's order is to freeze new military construction on overseas bases until a top-to-bottom review has been completed. The first question I have about this is, when will this review be completed?

Secretary DUBOIS. Yes. That article, as is often the case, isn't entirely correct. As I indicated, the Secretary has instructed the two major geographic commanders, combatant commanders, General Jones in Europe and Admiral Fargo in the Pacific Command, and sequentially, if you will, General LaPorte in Korea, to report back to him within 30 days on 2003/2004 MILCON projects that may need to be reprioritized.

General LaPorte has already contacted me and communicated with me on both 2003 and 2004 in Korea.

Without getting into details, because the Army is in the process of vetting those reprioritizations, if you will—and that is an important step. But what he, General LaPorte, has suggested is that, instead of building a barracks or a fitness center for the Second Infantry Division at this particular camp, he suggested it be moved to another camp in Korea that he believes will be an enduring base, as opposed to the first one.

The so-called freeze—and there is not a freeze per se—in Europe, the Secretary of Defense asked General Jones, give me your best estimates on any reprioritizations that are necessary given the changing environment that we live in, given the fact that many of these military construction projects were planned for three years ago and may not be what we ought to do in the next year.

So there has not been a freeze per se. The Secretary has asked for this information. We will make judgments in time for your markup; and that is, as I understood, is sometime in May.

Mr. REYES. Assuming that there are some of these projects that have been authorized and have been funded and the decision has been made not to follow through on them, what happens to that money?

Secretary DUBOIS. Well, as I indicated, my first read of General LaPorte's report was, instead of not doing certain projects, he wants to move the projects from Camp X to Camp Y. So there may not be, quote, monies left over, end quote. I will or the Secretary of Defense will formally communicate to Congress a reprogramming or a transfer action in military construction terms for those authorized and appropriated MILCON projects in 2003 which will be moved from one place to another, if there are projects that will not be done at all.

Mr. REYES. Okay. But, Mr. Secretary, if this review is ongoing, and it is already pretty late in the budget cycle year, a lot of these projects that are in this review will, from my perspective, won't be started until very late in the fiscal year. If that is the case, why can't we use that money instead, while you are going through this review, to fund critically needed projects domestically in the United States?

Congressman Ortiz, Congressman Weldon and I, and I think it was Congressman Schrock, took a tour of about 23, 25 bases in 4 days where we saw horrendous conditions. If there is money out there that you are still reviewing, let us bring it back and fund things like basic training barracks where we saw water leaking through from the showers down into the next level. Those are I think higher priorities if we are going to be undergoing this top-to-bottom review overseas.

Secretary DUBOIS. Well, that is why, Mr. Reyes, I wanted to be very clear. There is no freeze.

For instance, in Europe, projects are moving forward in areas that were not to be—that General Jones already told the Secretary—for instance, Ramstein Air Force Base, no projects have been impacted in Ramstein because the decision was made several weeks ago that projects scheduled and slated for Ramstein would continue forward.

So there is but a few, a very few that will be impacted in the 2003/2004 budgets. But as I indicated to you, sir, it may very well be that several millions of dollars—question mark—will come back to this committee for your advice and counsel on how it ought to be spent.

Secretary DUBOIS. Now, when will that happen? As I said, I will try to get to you, I commit to you that those, that information will come to this committee prior to your markup.

Mr. REYES. Thank you, Mr. Chairman.

Mr. ORTIZ [presiding]. Mr. Rogers.

The gentlelady, Mrs. Davis from California, do you have any questions?

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Chairman. Thank you very much for being here, Mr. Secretary. You mentioned at the beginning of your comments that we are working hard to basically

wipe out out-of-pocket expenses. Are you also including those out-of-pocket expenses in high cost areas?

Secretary DUBOIS. Yes, ma'am. Basic allowance for housing (BAH) is adjusted region by region, locale by locale. The overall out-of-pocket expenses should be driven to zero by 2005, 7.5 percent, 2003, 3.5 percent 2004, zero 2005. We also, on a periodic basis, reevaluate real estate and lease costs area by area. Your area, not only is it expensive, it is arguably one of the largest in military family populations in the country, and therefore of great interest and focus to all of—especially the Navy and the Marine Corps. But they do not hesitate to suggest to me or Dr. Chu, the Under Secretary of Personnel, that adjustments need to be made.

Mrs. DAVIS OF CALIFORNIA. They absolutely do need to be made. I think one area that we have discussed briefly is public-private ventures, and that is a way to begin to address that problem. And we have started down that road. I wanted to just mention to you that there are some unintended consequences as a result of that. We faced it with schools because of public-private ventures. The funds were basically put on their wages and then it looked as if the children were no longer eligible for free and reduced lunches. It also impacts Social Security benefits for some people who particularly have children with special needs. I just wanted to mention that. We have worked on the reduced lunch issue, but the other one is still out there and really does impact a lot of our families, so I would like to have your help and support.

Secretary DUBOIS. I have been made aware of this. As I indicated, it is not in my lane, per se, but the peculiarities that attach to RCI or housing privatization projects as they impact the individual military wage earner, both in a tax code way as well as an allotment and allocation way, are byzantine sometimes and I am flummoxed as to how we allow these things to happen. But again, Dr. Chu is very well aware of this and I am sure you have communicated with him and I continue to ask him as the housing guy how he is fixing it.

Mrs. DAVIS OF CALIFORNIA. All right. Thank you, and we actually were able to work part of it but not all of it. It is still out there. In looking at the public-private ventures as well, I think there is certainly land available for these public-private ventures. Do you see any real downside to them? Are you confident that this is the best way to proceed right now? And why is it then that we are not doing more of them?

Secretary DUBOIS. When the Congress gave us authority to do housing privatization, it was new and different. No one had ever done it before. As in cases such as this, you start slowly. You have to learn the ins and the outs. I remember Congressman Dave Hobson when he was chairman of the MILCON Appropriations Subcommittee, a week didn't go by when I didn't get a phone call about a particular project because three years ago we were again learning our way. There is no question, if you look at the curve of how many houses we are going to privatize, family housing units we will privatize—when Secretary Rumsfeld became Secretary in January of 2001, there were less than 6,000. At the end of 2004 there will be 102,000. That curve, the calculus has gone fairly steep. I do remember watching on the TV, the testimony of the Joint Chiefs on

housing related issues, and I apologize, I don't remember whether it was this House or the other body. But the Chief of Naval Operations, Vern Clark, made a very interesting and telling observation. He said, and it is true that the Navy has the least percentage of family housing. It is important for Navy families to own their house. He wants to encourage home ownership, a part of the American dream. That sentence, that comment, what it really means to me is we should not repair or rebuild or provide military housing on military installations where the local community and local economy can support either through rent or through purchase housing for military families. As an economist I can tell you I think I would rather see the private sector provide housing, the local economy provide housing and, where it makes sense, have privatization on post.

Mrs. DAVIS OF CALIFORNIA. I appreciate that. Obviously, in San Diego the housing issue is a real concern, and I would also love for our military families to take part in the American dream. But on the other hand, I know how difficult that is for them. And in many cases what happens of course is that their transportation costs and their quality of life go down measurably because they are in their cars for several hours a day.

Secretary DUBOIS. I suspect that is an aspect of southern California that is visited upon other places in the country, too.

Mrs. DAVIS OF CALIFORNIA. Yes. Thank you. Thank you very much.

Mr. HEFLEY [presiding]. Mr. Franks.

Mr. FRANKS. Thank you, Mr. Chairman. Mr. DuBois, you mentioned earlier, if I understood correctly, that somewhere in this process there was some legislation related to the ranges connected to certain bases. Can you elaborate on that just a little and help me understand what that is and where it is in the process?

Secretary DUBOIS. The Readiness and Range Preservation Initiative which the Administration introduced for Congress' deliberation last year is being reintroduced this year in the Defense Authorization Act. Last year Congress adopted one of the five—excuse me, one of the six so-called controversial provisions, the Migratory Bird Treaty Act Amendment and we are very grateful that you did. The other five provisions pertain to the Endangered Species Act, the Marine Mammal Protection Act and the three so-called media statutes, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act and Clean Air Act, are also part of the legislative proposals now on the Hill. We stand ready to testify before this committee as well as the other committee of jurisdiction in this regard. In the case of the House of Representatives it is the House Resources Committee and the House Energy and Commerce Committee, and we have been in contact with Chairman Pombo and Chairman Tauzin to set up those hearings. We hope, and we believe that what we asked for last year and the minor adjustments to what we asked for last year are every bit as important this year as they were last, and we hope that the Congress will address and embrace them. And as I indicated this morning, I indicated on the Senate side and today of course in front of this subcommittee, as I have already testified before this subcommittee, these are issues that directly impact readi-

ness in our military and there is no greater obligation in terms of the Secretary's portfolio than to provide realistic live fire combat training to our military folks who have volunteered to serve in uniform and protect us.

Mr. FRANKS. Thank you, Mr. DuBois. Can you tell me, is that legislation slated to come before this committee at all?

Secretary DUBOIS. Yes, sir. It is in the Defense Authorization Act proposal, which is already before the Armed Services Committees of the House and the Senate. And as I indicated, I have testified a few times on this and look forward to testifying a few more times, as well as, I might add, the folks who were on the panel before me. Four vice chiefs are going to testify or have testified before the Senate on this very issue. I must say they are a compelling group when they talk about it because they are all combat veterans. I served in United States Army in Vietnam in 1968 and 1969, and there is no question in my mind that it would be a travesty if the first time our soldiers, sailors, airmen and Marines were to meet the enemy and hear the whiz of a bullet over their head it were to come in combat and not in training.

Mr. FRANKS. Well, thank you, Mr. DuBois. In my case we have the Goldwater Range. It is a very critical element of the viability of Luke Air Force Base, and so that is the rationale for my questions.

Secretary DUBOIS. A crown jewel, I might add.

Mr. FRANKS. Thank you, sir. I hope you will tell everybody you know. I want to ask you one last question. I am going to try and put them all together. Just for those of us to gain some overall perspective, can you tell me the total number of bases that could potentially come into the BRAC process, just their jurisdiction and, second, how many bases did we close last time? And is there any notion in the world of how many we might close this next round?

Secretary DUBOIS. I think that in the last four rounds of BRAC, some 97, I believe the number is 97, major installations were closed or realigned downward, on top of which there were 200-plus small, minor installations that were realigned or closed. There is, as I indicated, no set number. I could not even possibly hazard a guess, nor would I at this moment. It is entirely premature to do so. I think that it is safe to say that if it turns out, and this is the other part of the legislation that requires the Secretary in February of 2004 to report to you all and certify the fact that a BRAC is needed, certify the fact that there is still excess capacity in the system, certify the fact that there will be impacts, positive and negative, but at that point, even then, February of 2004, it would be premature for the Secretary to indicate that by definition, therefore, 14 will close, 28 will be realigned.

Mr. FRANKS. Thank you, sir. The last question, just for perspective, what is the total number of the military bases that we have that could even be considered by BRAC? Just the total number of bases.

Secretary DUBOIS. If memory serves me, there are 398 major installations in the U.S. and its territories. And there are probably, if you are going to count National Guard Armories, hundreds and hundreds and hundreds more than that. But my recollection is there are 398 major installations or test and training ranges. I

count, for instance, the Barry Goldwater range in that 398, for instance. Twenty-Nine Palms in California is counted, even though it is not an installation. It is a major piece of real property assets, a major real property asset, in the case of Twenty-Nine Palms, the Marine Corps, the Department of the Navy. Overseas I believe we probably have another 60 or so major installations.

I often asked when I came on board two years ago, define for me what major means. Well, it was, does it have plant replacement value in excess of a billion dollars? Is that a right—I know some installations that are considered major and important that don't have plant replacement value of that, but I consider them major and important.

Mr. FRANKS. Thank you, Mr. DuBois.

Mr. HEFLEY. Last questioner. Mr. Snyder.

Dr. SNYDER. Thank you, Mr. Chairman. In my short time here today, Mr. Secretary, I have heard several pronunciations of your name once again. What is your preferred pronunciation?

Secretary DUBOIS. Notwithstanding the French that has been taking hits of late, my French heritage and my grandfather was Lionel Pierre DuBois, and I pronounce it as he did. DuBois.

Mr. HEFLEY. Would you mind changing your name?

Secretary DUBOIS. I think I could be just as effective, Mr. Chairman.

Dr. SNYDER. Just a couple of questions. In the last several months, I guess even longer than that, as we have had call-ups and forces have been moving around because of the buildup in the area around Iraq, have you received any anecdotal reports from troops that have been moved into temporary facilities that they have been inadequate?

Secretary DUBOIS. In Southwest Asia?

Dr. SNYDER. No, here in the continental United States (CONUS).

Secretary DUBOIS. In CONUS that they have moved into——

Dr. SNYDER. Barracks temporarily and they have——

Secretary DUBOIS. That are inadequate in the United States?

Dr. SNYDER. Yeah.

Secretary DUBOIS. Oh, there is no question that there are inadequate barracks, inadequate housing in the United States. There were, I think, in 2001.

Dr. SNYDER. No, I understand. But what I mean is, you know, I got a letter from somebody about a base not even in my district that they just wanted me to know that people were called up and sent temporarily to a district and they were just appalled by where they were having to stay for a week or two. I was just wondering if you all were hearing those reports.

Secretary DUBOIS. No. As you know, I wear several hats and one of them is the Director of Administration and Management for the Secretary of Defense and, as such, I am the Mayor of the Pentagon. We have a battalion of Military Police from around the country that come and secure our 208-acre reservation. They have been put up in a barracks at Fort Myer that was clearly inadequate and we have tried, using O&M dollars, to improve them, improve those barracks, because the roof leaked and the washing machines didn't work and the water fountains were broken. But this was a barracks that had been slated not to be used and to be demolished.

But we had no choice. It was either tents or trying to fix up this place, and we fixed it up.

Dr. SNYDER. Yeah. That is the kind of thing I had heard, too.

Secretary DUBOIS. We have heard some of these situations and my three colleagues in the services, the assistant service secretaries, one of whom is with us today, Dr. Fiori, jumps on situations like that.

Dr. SNYDER. In your written statement you discuss BRAC. There has been some discussion today. You use the figure, I believe, in your written statement that we have heard for several years, that there is 20 to 25 percent excess capacity. I have never been sure exactly how that has been calculated. Now that you have been on the job for, you know, two and a half years or so, are you still comfortable with that or is that just a general ballpark figure that we have that has become kind of mythical or is that a reasonable estimate?

Secretary DUBOIS. The Secretary and I have had this discussion because I said to him one day, boss, I think it is a very clumsy number. And he agreed with me. And he said, how did we get to that number? It goes back to this GAO report which did an analysis of capacity by category, pier space, apron space, runway, hangars, and you took the amount of force structure, people and equipment and weapon systems and platforms and the amount of infrastructure and you mapped it together according to categories. And as we all know, the analysts can get very precise and create a mosaic that yields a percentage. I don't think it is accurate. It is clumsy, and that is what I was trying to indicate, too. It does not directly relate, will not directly relate to a closure or realignment percentage when it is all over and done with. I don't think it will.

Dr. SNYDER. Right. Great. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you. We are going to have to bring this panel to a close. Ray, let me say though, don't make the assumption you are going to get another round of base closures in 2005. You probably will, but don't make that assumption. There are efforts being made to see that that does not happen, that it be postponed.

Also, don't make the assumption that you are going to get it, if do you get it, under generally the same kind of conditions that we had under the last rounds. And one of the suggestions that you pass off and most of the people over there pass off is the idea of taking to the table the things that you know you are not going to close. I might start with the Air Force Academy and West Point and Annapolis. You know you are not going to close them, Fort Irwin, Pendleton you know you are not going to close them. Get those darn things off the table. I cannot believe that the brain trusts at the Pentagon are sitting over there in blissful ignorance not knowing what we have to have and what we don't have to have. There are a certain number and maybe it is a percentage. Maybe you could say a third of the bases that you have, 300 maybe, you could say 100 of these bases we absolutely can't do without and we are not going to let some committee determine for us that they are going to be closed and we will have another Cecil Field incident.

I just say that for you to think about, first of all making the case that we need another round of base closure because that is going to come up repeatedly this year and, second, being open-minded to think of suggestions about tweaking the process to maybe make it work better. I think those of us that have been through the other rounds think there may be some ways that could make it less painful.

Mr. ABERCROMBIE. Mr. Chairman, before you close could I make a correction? Mr. Rumsfeld didn't say how did we get to that number? He said, how did we get to that number?

Secretary DUBOIS. Mr. Abercrombie, you do it so much better than I.

Mr. HEFLEY. Thank you very much, Mr. DuBois. Our second panel will be made up of the Honorable Mario Fiori, Assistant Secretary for the Army for Installations and Environment, Major General Larry Lust, Assistant Chief of Staff for Installation Management, Brigadier General Clyde A. Vaughn, Deputy Director, Army National Guard, and Major General Collis N. Phillips, Deputy Chief of the Army Reserve. And gentlemen, we will start when you get settled.

Deputy Under Secretary Fiori.

STATEMENT OF HON. MARIO P. FIORI, ASSISTANT SECRETARY OF THE ARMY, INSTALLATIONS AND ENVIRONMENT

Secretary FIORI. Good afternoon, Mr. Chairman and members of the committee. I always enjoy following Ray DuBois. He takes all the hard questions that we have, and we have some of the other things to tell you about. We are really pleased to be before you to discuss the Army's fiscal year 2004 military construction budget. We have provided detailed written statements for the record and would appreciate an opportunity to comment briefly on the highlights of our program.

The Army's overall 2004 budget request supports the Army vision, transformation, readiness, and people. It implements a strategic guidance to transform to full spectrum force while ensuring warfighting readiness. It reflects a balanced base program that will allow the Army to remain trained and ready through fiscal year 2004, while ensuring that we fulfill our critical role in the war on terrorism.

Our military construction budget request is \$3.2 billion and we will fund our highest priority facility and family housing requirements. When we developed this year's budget, difficult decisions were made to optimize our resources in response to the global situation. The Army budget provides the best balance among all of our programs, including military construction.

Transformation is one facet of the Army vision. The Army is fundamentally changing the way we fight and creating a force more responsive to the strategic requirements of the nation. Our 2004 budget includes facilities to support both the Active and Reserve components in this transition.

First, we are transforming installation management. On October 1, 2002 the Army placed the management of Army installations under the Installation Management Agency. The Installation Management Agency is a new field operating agency reporting to Gen-

eral Lust. It is a top-down regional alignment which creates a corporate structure with the sole focus on efficient and effective management of all our installations. It frees our mission commanders to concentrate on transformation and readiness.

Second, in support of transformation, our budget contains \$329 million for 17 projects at 4 installations, an additional \$85 million for 31 Army National Guard projects, facilities requests that cover the spectrum needed for effective operations and training, including ammunition supply point upgrades, mobilization facilities, training land acquisition, maintenance facilities, ranges, information system facilities, barracks, and family housing. The National Guard Army Division Redesign Study facilities include readiness centers, maintenance shops, and training fire stations.

The second facet of the Army vision is readiness. Army installations are our nation's power projection platforms, and they provide critical support to the Army and joint operations. We have requested funding for key projects that specifically focus on readiness and include firing ranges, live firing ranges, maintenance, test, deployment facilities, Army National Guard readiness and Army Reserve centers. These critically needed projects constitute \$266 million of our budget.

The third facet of the Army division is people. The Army continues its major campaign to modernize barracks to provide enlisted permanent party soldiers with quality living environments. With the approval of our 2004 budget, 79 percent of our barracks requirements for permanent party soldiers will be funded. Additionally, we are including physical fitness centers and dining facilities to support soldier fitness and well-being. According adequate and affordable housing continues to be a major concern to soldiers and their families.

With the approval of the 2004 budget, out-of-pocket expenses, as Mr. DuBois had mentioned, because of the increase in BAH will be three and a half percent and by 2005 will be zero percent. This year's budget expands family housing privatization and it increases improvements to existing housing. It supports our goal to have contracts in place by 2007 that will provide adequate housing to all on-base military families. These projects include almost 72,000 homes, more than 80 percent of our inventory in the United States.

In closing, Mr. Chairman, I sincerely thank you for the opportunity to outline our program. As I have visited Army installations, I have witnessed progress that has already been made and I attribute much of the success directly to the long-standing support of this committee and your staff. We look forward to working with you as we transform our Army installations, and I would like now to turn it over to Major General Lust for his comments, sir.

[The prepared statement of Secretary Fiori can be found in the Appendix on page 421.]

Mr. HEFLEY. General.

STATEMENT OF MAJ. GEN. LARRY J. LUST, ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT, DEPARTMENT OF THE ARMY

General LUST. Mr. Chairman and members of the committee, it is a privilege for me to be here today to talk to you about the

Army's fiscal year 2004 military construction, family housing, base realignment and closure programs. I am here today representing the men and women who serve in our Army and protect our nation every day. If these soldiers and family members could be here today, I am sure they would thank you, as I do, for the strong support for our military construction programs, especially in the areas of barracks and family housing.

As Dr. Fiori has mentioned, our budget request of \$3.2 billion in military construction supports the Army vision for people through barracks and family housing, ranges of our training and maintenance and deployment facilities, and transformation with projects for the Stryker brigade combat team. This budget meets our most critical requirement and ensures the Army is prepared to respond to our nation's call today and in the future.

The evolving strategic and operational environment our nation faces requires the transformation of this great Army. The transformation will impact all aspects of the Army, to include how we manage our installations. For example, as Dr. Fiori has mentioned, we have created the Installation Management Agency. Instead of 14 different headquarters involved, we now manage our installations through a single headquarters, which allows for a cooperative approach to management and improving the well-being of our soldiers, families and civilians worldwide. In addition to the new management structures, we are providing new facilities to meet the needs of the Stryker brigade combat teams. As in past years, this budget request is a balance between the Active and the Reserve components in the areas of military construction, sustainment restoration and modernization and base support operations. In addition, this request is balanced with the Army's other programs and its overarching priorities of people, readiness, and transformation.

I, like Dr. Fiori, look forward to working with each of you in making sure that our Army is prepared to respond to our nation's call today and in the future.

Sir, I will be followed by Brigadier General Clyde Vaughn, Director Deputy of the Army National Guard.

[The prepared statement of General Lust can be found in the Appendix on page 421.]

Mr. HEFLEY. General.

STATEMENT OF BRIG. GEN. CLYDE A. VAUGHN, DEPUTY DIRECTOR, ARMY NATIONAL GUARD, DEPARTMENT OF THE ARMY

General VAUGHN. Mr. Chairman, distinguished members of this committee, I appreciate this opportunity to present our military construction budget request for fiscal year 2004. This year's request for \$168 million will build or improve 35 Army National Guard facilities. It is focused on the Army's vision, to the commitment of transformation, readiness and people and incorporates these areas into our fiscal year 2004 military construction program.

The majority of our project requests supports the continuation of the Army Division Redesign Study (ADRS). ADRS addresses an Army issue of a combat support and combat service support force shortfall. The Army National Guard, in support of the Army's need, is reorganizing selected combat units toward this end.

Our transformation to the combat support and combat service support force units creates a new need for facilities. The request of \$84.9 million for these 31 projects in 14 states will support the construction of readiness centers, organizational maintenance shops, training fire stations and one working animal building. Also included is an Armed Forces Reserve Center jointly shared with the Marine Corps Reserve. These projects support all areas in the Army's vision.

While challenging, the Army National Guard does its best to revitalize our structures. We have included 4 revitalization projects at the cost of \$55.3 million in this year's MILCON request. Three of these projects are part of the Army facilities strategy, which used a focused approach to improve conditions of certain facilities types. These projects include the readiness center, consolidated maintenance facility, and an Army aviation support facility.

The military education facility is the fourth revitalization project request. This facility supports trained soldiers in eight States. The projects will provide an up-to-date environment that will save training dollars. These projects are about people and readiness, training our soldiers, providing for their well-being, and maintaining and sustaining their facilities and equipment to be ready for our nation's call and state emergencies.

Mr. Chairman, the Army National Guard is proud of its history of accomplishments and service to our nation, the states and territories. With this budget request we can continue to provide those services and remain a cornerstone of our nation's defense.

In closing, I thank this committee for your time and this opportunity to testify on behalf of the great men and women of the Army National Guard. I will be followed by Major General Collis N. Phillips, Deputy Chief of the Army Reserve.

[The prepared statement of General Vaughn can be found in the Appendix on page 421.]

Mr. HEFLEY. General Phillips.

STATEMENT OF MAJ. GEN. COLLIS N. PHILLIPS, DEPUTY CHIEF, ARMY RESERVE, DEPARTMENT OF THE ARMY

General PHILLIPS. Mr. Chairman and distinguished members of the committee, it is a privilege to appear before you to represent the men and women of the Army Reserve, a force that provides the Army with invaluable capabilities in defending our nation's interests. It is an honor to present the Army Reserve's military construction budget request for fiscal year 2004.

The Army Reserve military construction program focuses on our number one priority, readiness. Our fiscal year 2004 budget asks for \$68.4 million, which includes construction of 4 projects, that ensure the Army Reserve continues to be a highly trained deployable force that stands ready to respond whenever and wherever called upon. These projects consist of three Army Reserve centers with training, maintenance and storage buildings and one maintenance and storage facility.

The Army Reserve supports joint construction initiatives. We are currently completing construction of two joint projects. We are also actively planning three projects with components of the Naval Reserve, Marine Corps Reserve and the Army National Guard.

I want to highlight three success stories. The first is transformation of installation management; second, the real property exchange program; and, third, the readiness function of the Army Reserve centers.

First, under the leadership of the Secretary of the Army to transform installation management, we are pleased to say that the Army Reserve is fully integrated in the new Installation Management Agency. This integration of staff allows the Army Reserve to use the same corporate structure and standards as the Active components to more efficiently apply our limited resources in the management of Reserve centers and provide an equal level of service to all of our soldiers and their families.

Second, the Real Property Exchange Program has allowed the Army Reserve to receive new modern facilities in exchange for old obsolete Reserve centers located in high density population or expensive commercial property areas. This is a win-win situation for taxpayers, as there is no expenditure of military construction dollars and developers can revitalize inner cities or downtown districts, therefore increasing tax revenues for local municipalities.

Third, Army Reserve centers are multifunctional facilities that provide the support to the Army vision, people readiness, and transformation. Army Reserve centers fully support our warfighting needs, provide the initial projection of Army Reserve forces, and serve soldiers and families as a lifeline of support during peace and war.

Army Reserve centers are located in the hometowns of the American people across the country. The visibility of Army Reserve centers requires that we continue to be good stewards of the taxpayers' dollars and apply those resources to Reserve centers with the highest priorities. The Army Reserve wants the American public to know that the Army Reserve is a good return on their tax dollars.

Mr. Chairman, the fiscal year 2004 budget is a balanced program that permits us to execute our essential construction programs. This request is part of the total Army budget request that is strategically balanced to support the current war effort, the readiness of the force and the well-being of our personnel. We are grateful to the Congress and the nation for the support you have given and continue to give to America's Army Reserve as well as the nation's most valuable resource, our soldiers.

This concludes my statement, and I would turn the hearing back over to Dr. Fiori so that we can answer any questions from the committee.

[The prepared statement of General Phillips can be found in the Appendix on page 421.]

Mr. HEFLEY. Thank you very much. All of you. Neil, you didn't get a chance the last time. I will start with you.

Mr. ABERCROMBIE. Thank you very much. Secretary Fiori, I want to thank you for your sensitivity and your responsiveness with respect to circumstances we have had to deal with in Hawaii. It is a long way away from the mainland. We have some unique situations and circumstances there that require someone who is willing to act on the premise that one size doesn't necessarily fit all, and I want to compliment you for that and thank you for it.

With respect to a question that both the chairman, myself and other members have had to deal with over the years, when we were not only contemplating but acting on the premise that there would be year-by-year authorizations and appropriations, essentially cash financing of our MILCON projects, even more particularly with respect to housing, with respect to quality of life issues, there was an argument made that to try and put in some kind of a provision, language provision either in the authorization bill, the appropriation bill or both, concerning local hiring, concerning local firms being considered, construction firms, supply, distributions and so on. Also there would be an argument, well, you can't do that. You have to open this up for bidding to everybody. And more often than not, in many instances, very large corporations could come in, they could do the bidding, they could take the chances, they could troll, if you wish, for jobs, and some of the smaller companies, corporations and so on couldn't ever compete with that. The best they could hope to do is to try to come in as a subcontractor, something like that. So that played itself out over and over again over the years.

The problem comes now, and I think there is a significant change as a result of the work that the chairman did in particular, that I want to compliment, of opening up the MILCON process, particularly where quality of life issues like housing was concerned, opening up the private-public partnerships, opening it up to new financing regimes, opening up to new and experimental and innovative ways of trying to fund long-term commitments to rehabilitation of houses, building of houses, management of housing. Again, in particular as a result of that innovative work that the chairman was in great measure responsible for, we now have the possibility of catching up and perhaps even surpassing our targets with respect to the housing that otherwise never would have had a chance to be completed. I am sure you would agree, because the simple process of trying to get through the amount that was needed, the amount of housing that was needed and the funding that would be available on a year-by-year project by project basis simply wasn't possible. So now we are in a situation where we are moving slowly, but most assuredly surely towards long-term financing, housing development, developers very, very interested in getting into it. It is not just the Army. There is the Navy, there is all kinds—we have this Ford Island project that we are stumbling towards a conclusion with out in Hawaii. But we are also coming into long-term contracts and the reason for my long preamble, Mr. Chairman, is that it is one thing when you are dealing year by year. I was just saying to Mr. Reyes here that, you know, if you didn't quite get your folks working on a project this year, well, there is always next year. And we, you know, we had our chance and we would scramble and see if we couldn't get our folks working. But when you come up with something, or when one comes up with something like a 50-year contract, boy, let me tell you. It scares people because they think what happens if the contract goes to some mega company who then has us at its mercy, in effect because they are going to be doing the building, the rehabilitating, the management, the landscaping, you name it, the every day management, those kinds of things.

My question is—maybe it is an observation that will become a question—is it appropriate when you have such long-term contracts for us to put some language in the authorization and appropriation bills that local folks are going to get the work, that local companies in our constituencies are going to be able to get the work, are going to have to be taken into account, where there is going to have to be a local bill provision?

Well, I had to go through that, Mr. Fiori, because this is an issue that is of burning importance to our constituents. You start thinking about a 50-year commitment. Your commanders aren't going to be there 50 years. But in a place like Hawaii I can tell you we don't get to get on a bus or a car and drive to the next county or go to the next state to get a job. We are out there. So this question I think becomes—can you folks consider whether or not we can have some kind of a local bill of consideration when you have these long-term contracts out for the rehabilitation and development?

Secretary FIORI. I would be glad to try to address the problem, your question sir. I really work very closely with our small business person, Mrs. Tracy Spencer, and we work closely together in all our projects, every time I have gone into Hawaii to do RCI I have Tracy come with me. As you know, we have had the success in the other programs that are over 70 percent of our money that is used for housing. Both the construction, the rehabilitation, and the maintenance of them stays in the local community. We have these long-term 50-year contracts. We need them obviously to get the capital that we need, to get started on building these houses out and by the year 10 of any one of these contracts, which I think is the longest—I have one contract I think that I have to go out that far—we will have either rehabilitated or rebuilt, well, rehabilitated, rebuilt or built new homes on every one of the installations from the time we transferred the property to the contractor. The concern about 50 years that is a long thing to predict in any case.

The system is designed where the mega-companies can't really dictate to us. We have protections in here where that garrison commander as long as he is there, as long as he has people available to use those facilities, and that will become almost voluntary. By the way, the contractor will have to fight for his profits and his money once we get into the steady state in about year 10. He is, by definition, and I would say almost that you have an advantage over most other places because we are in Hawaii, that we are going to use mostly Hawaiian labor force and in fact, as you know, one of the competitors for your contract in Hawaii is a major Hawaiian company, but not a small business.

Mr. ABERCROMBIE. Well, it goes beyond small business. A big business in Hawaii doesn't even approach what is on the mainland.

Secretary FIORI. I don't think we need additional legislation to include small business. I think we have plenty of regulations right now that tell us that we must and we do. With all sincerity and intent and I think in my 10 years now in government service in different places we have very much concentrated on making sure the opportunities are there for the small businessmen.

Mr. ABERCROMBIE. Thank you, Mr. Chairman. But, Mr. Secretary, I want to say again for the record, I am not just talking about small business. I don't mean you personally. Small business

as it may be defined by some of these people, let me tell you, is a big business in a hell of a lot of districts and constituencies in this country and it is big business for us. For the mega-companies it doesn't mean anything. But day-to-day, day in and day out our people depend on us. I appreciate what you are saying and I appreciate the time, Mr. Chairman. But I do think we have to devote a little more time to this subject to make sure that our local people are not being frozen out and that local consortium can compete against the mega-companies.

Mr. HEFLEY. Mr. Ortiz.

Mr. ORTIZ. Thank you, Mr. Chairman. Mr. Secretary, I know that the Army, like all the services, is participating in the development of the next BRAC in the year 2005. How is the Army preparing for the 2005 base closure rounds? Are you doing any planning or are you formulating any ideas as to what you are going to do, and in what general categories of installations do you believe the Army has excess capacity and why?

Secretary FIORI. Well, yes, sir, we are working very closely on the BRAC, and one of the major changes in the whole BRAC process, and that is the one we are consumed in at the moment, has to do with the joint use of facilities. We have developed in the office of the Secretary of Defense (OSD) and very closely with Mr. DuBois, and my three counterparts have worked hard to first work and decide through a process that we have developed and the senior people in the Pentagon, what elements are going to be reviewed jointly. Then the next step is what sub-elements of those major elements are going to be done and the organization for doing that. Our first deliverable to Congress has to be the criteria we are going to evaluate all the facilities that we have. That is the guidance we have right now. And I certainly understand the chairman's opinion that maybe we shouldn't do it to all of them. But the fact is you almost have to do all of them because not all of them are going to be shut down. If they get shut down, there are going to be new facilities put on those places. So almost every one is on the plate in one way or the other.

I, personally for the Army, have hired Dr. Craig College. He is a highly skilled senior civilian executive who is our Deputy Assistant Secretary and who is going to do all the evaluations for the Army and also be our coordinator with the joint studies in OSD, and that is the extent of what we have done so far. We have not looked at any facilities yet. Our first task is to try to figure out the criteria that we are going to use to evaluate the military readiness as the primary one. What software are we using and what people are we putting together to do the study? I have a relatively small budget for this year and next year.

Mr. ORTIZ. One of the things that we have come across is that when they do shut down some facilities, base, there is a lot of these facilities that were not built with appropriated funds. But they used nonappropriated funds, which means that there was funding coming from the soldiers, you know. And many times what we do, we just give those facilities away and that is not taxpayer money. That is money that the soldiers spend and the profits went to make a better quality of life for them. Now, are you consulted once they do have a base closure as to what you are going to do with those

facilities that were built with the soldiers' money and not appropriated funding?

Secretary FIORI. To be honest, I have not looked at the history on how we have disposed of some of those properties. One of the things we have decided on, both individually with Dr. College and also Mr. DuBois, who is using his Deputy, not only are we going to look at a process and a methodology of how to make our recommendations. An important element that I saw missing in the previous four BRACs is what are the end states of all these facilities and how do we dispose of them?

So we are doing something separately or independent really of the BRAC study on how to dispose of the property, and I will promise you that I will certainly consider the comment you made about the nonappropriated funds. I just haven't given it that much thought, sir.

Mr. ORTIZ. You should because that is a lot of money. It comes from the soldiers' money, you know, and I don't think that is fair to them. I appreciate all you have done and the work that you will continue to do.

Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you. Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman. I would ask, with regard to our current state of surge and readiness that we are experiencing, is it your opinion, and I would direct this particularly to General Lust, is it your opinion that our depot structure has been adequate to meet our maintenance and support our maintenance obligations in this current state?

General LUST. If I recall, we have five maintenance depots and in my previous duty position before I became the current Assistant Chief of Staff for Installation Management, I was the Deputy G-4 (Deputy Chief of Staff, Logistics) for the Army, and in that light it was not a matter of capacity that we had. It was a matter of funding, of being able to push the stuff through in a timely manner and recapitalize the equipment in a manner which you wanted. It wasn't necessarily so much of a capacity of having the right number of depots. It was being able to fund and have the funds with all other competing priorities to in fact be able to induct into the depots those items in the sufficient numbers and quantities that we wanted, to be able to field and recapitalize the system as we desired.

So the short answer is capacity has not been a problem. It has been the funding, as I recall, sir.

Mr. ROGERS. Well, I guess I am really interested in your capability to meet our maintenance obligations. We are in a heightened state of readiness as we all know, and it has put a real demand on the infrastructure. We have heard some talk about excess capacity or capability, and I want to know if you are seeing that excess at present with this state of readiness that we are in now. We may in the foreseeable future have to meet this level of readiness, I think, again, we would all agree.

General LUST. Again, I go back. It depends on what scenario you want to go against when we have excess capacity. The capacity we have right now that we are again using is the amount of money I would put against to in fact push the stuff through.

Mr. ROGERS. I am thinking in terms of infrastructure, the depot infrastructure. Is there an excess, in your opinion, of infrastructure given the level of readiness that we are currently in?

General LUST. Sir, that question is out of my lane. I will take it, get an answer back to you from the G-4 because it has been eight months since I have been there and that could have been changed with the environment they are working with right now, sir.

[The information referred to can be found in the Appendix beginning on page 456.]

Mr. ROGERS. Well, let me ask this question then. I know transformation is real important in your future. How do you see the depot infrastructure that we have now meeting your future goals as far as the transformation of the military?

General LUST. The transformation? Well, again sir, that question is not an axiom question. That is a question I will have to get answered for the record because that falls in the G-4, in the logistics community plus the Army Material Command community as to whether that meets in the transformation, sir. But will we need depots? Yes, sir, we will need depots. How they will be manned is another question.

[The information referred to can be found in the Appendix beginning on page 456.]

Mr. ROGERS. I agree we are going to need depots. The point that I am trying to focus on is we are hearing this talk on this committee, from you folks, not just in your branch but in all the branches, about this supposed excess in capacity that we have, we heard the figure 20 to 25 percent earlier, arguably it is an inaccurate figure based on the previous panel. I don't see that kind of excess and I am looking for somebody to show me where, particularly with regard to the depot structure, we have that kind of excess or anything approaching that, particularly given what we are currently experiencing in the form of end strength and what we can for the foreseeable future anticipate having to rise to again the level of end strength. I don't see us in a BRAC, downsizing significantly our depot structure, and then having problems as far as supporting our end strength in the future and this maintenance operation.

Secretary FIORI. Mr. Rogers, maybe I can help on that because I have been participating quite a bit on the joint studies or the starting up of our joint studies. We believe there is excess capacity. Can we pinpoint it across the OSD? Probably we could give you a lot of apocryphal stories about different places, different places being at 40 percent, 30 percent capacity because they don't need to produce. But the fact is we are going to put under the OSD mantle the review of all our bases that—for all of our depots, shipyards and everything else and hopefully include in that the effects of the civilian part of our supply chain also. So I don't think we could give you a good answer now, except we do believe there is excess capacity. It is just how you divide it up and how you make sense out of it, and we are going to do it across the whole OSD rather than just the Army as in previous times.

Mr. ROGERS. Okay. Well, I look forward to receiving that information. I want all y'all to know how much I appreciate y'all and the great job y'all are doing for us. Thank you, Mr. Chairman.

Mr. HEFLEY. No other questions. Let me say, Mr. Fiori, I don't see any reason you couldn't take off the table those you know that you aren't going to close and still consider them for realignment. I think you could do that as well. You are not going to close Fort Hood. You know you are not going to close Fort Hood. But maybe you in your internal analysis say, but we have 10 percent excess capacity at Fort Hood. We could take some realignment there of some kind. I think you could do that in advance, couldn't you?

Secretary FIORI. I would suppose, sir.

Mr. HEFLEY. Yeah. Let me ask the Guard and Reserve a question. Traditionally the pattern is that the Guard and Reserve request is under-requested, particularly the Guard, I suppose because the idea and the tradition has always been Congress loves the Guard. They will take care of them. So we don't request everything that the Guard needs.

How does your budget compare to that kind of standard this time? Do you think you are getting the kind of requests you need or do you hope that there will be some adds from Members?

General VAUGHN. Mr. Chairman, obviously right on the mark. This particular request, though, is higher. With the exception of 2002, it is higher than any we have ever had. As you well know, we relied on the add-on piece of this for many, many years. In fact, we weren't even hardly in the business, you know, 1996, 1997, 1998.

Mr. HEFLEY. That is true.

General VAUGHN. If it hadn't been for Congress we wouldn't have been able to do anything. As we look at this we are on a ramp and there is a lot of promise for the outyears, and of course the FYDP piece of that and the structure of that; as we see the need strategically, is it possible to do something different?

Yes, the capability to do something, you know, to add on that is there. But we are going to have to grow some, especially in the out-years, to execute what we have lined up on our budget. I would just say that I think as an Army that we have been treated a lot better in this particular budget request and it looks a lot better in the outyears. Is it enough? Difficult question.

Mr. HEFLEY. Well, then I can safely tell members when they come to me that, no, no, you would be offended if we did add-ons.

Well, thank you very much. We appreciate your testimony very much. It is quite helpful.

And thank you, committee. It has been a long but a good afternoon.

The committee stands adjourned.

[Whereupon, at 5:56 p.m., the subcommittee was adjourned.]

A P P E N D I X

MARCH 18, 2003

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 18, 2003

HOLD UNTIL RELEASED
BY THE COMMITTEE

STATEMENT OF

MR. RAYMOND F. DUBOIS
DEPUTY UNDER SECRETARY OF DEFENSE
(INSTALLATIONS AND ENVIRONMENT)

BEFORE THE SUBCOMMITTEE ON
READINESS
OF THE HOUSE ARMED SERVICES COMMITTEE

March 18, 2003

Mr. Chairman and distinguished members of this Subcommittee, I appreciate the opportunity to discuss the President's Budget request for fiscal year 2004 and the plan of the Department of Defense for improving its facilities. The Department is transforming its force structure to meet new security challenges and transforming the way it does business. In Installations and Environment, this translates into a renewed emphasis on taking care of our people, providing facilities to support the warfighter by eliminating facilities we no longer need and improving those that we do, and modernizing our business practices – all while protecting the environment and those assets for which we have stewardship responsibility.

To prevail in the Global War on Terrorism and to prepare for future threats to American security, the Secretary of Defense has argued forcefully that we must transform the military. Our military capabilities must become more lethal, agile, and prepared for surprise. This transformation was under way before the attacks on September 11th. But, let us be clear, transformation is about more than new weapon systems, doctrinal innovation, and the employment of technology; it also is about changing our approach to the fundamental business practices and infrastructure of the Department of Defense.

The Department currently manages more than 620,000 facilities, valued at around \$600 billion, and over 46,000 square miles of real estate. Within that portfolio of real estate and facilities, we manage threatened and endangered species, diverse geological features, and important historical resources, including 68 registered National Historic Landmarks and over 14,000 properties currently listed on, or eligible for, the National Register of Historic Places.

The Defense Facilities Strategic Plan is our roadmap for managing this portfolio and outlines our long-term plan – healthy, productive installations and facilities that are available when and where needed with capabilities to support current and future military requirements. In recent years, we have developed models to more accurately determine our requirements and a sound management plan for getting our facilities back on track.

Today, I will address our accomplishments and future plans for restoring readiness to our facilities by taking care of our people, taking care of what we own, improving our business practices, and transforming our bases and infrastructure.

THE ROAD TO RECOVERY

Military installations and facilities are an integral component of readiness. Installations are the “platforms” from which our forces successfully deploy to execute their diverse missions. Over many years, these “platforms” have deteriorated. For instance, each year the Major Commands of the Military Services rate the readiness of their facilities by category. In the 2001 Installations’ Readiness Report (IRR), the Component Commanders – the force providers – collectively rated 68 percent of facilities categories C-3 (have serious deficiencies) or C-4 (do not support mission requirements), a slight improvement from the 69 percent rate in 2000. The 2002 IRR is roughly the same as 2001. Investments made since fiscal year 2002 will take several years before the affects are apparent. We are in the process of reversing the decay, but much remains to be done. From fiscal years 2002 to 2004, we will have put over \$28 billion in the sustainment and revitalization of our facilities, and we are beginning to see the results.

The installations management approach of the Department led us to a different way to view our installations and environmental portfolio. This portfolio is more than simply military

construction and family housing. It also includes environmental funding and other contributions from appropriations such as military personnel, host nation support, non-appropriated funds and working capital funds, in addition to operations and maintenance (O&M). This funding sustains our facilities through day-to-day maintenance and contributes to our restoration and modernization program. The fiscal year 2004 budget request includes over \$19 billion in fiscal year 2004 to support our entire portfolio.

The Facilities Sustainment program funds the normal and scheduled maintenance and repairs for the inventory, using operations and maintenance funds primarily, supplemented by other sources. Sustainment preserves the inventory and allows it to reach its expected service life. For the O&M-funded sustainment requirement, we are sustaining our facilities at 94 percent of commercial benchmarks, slightly over the 93 percent requested last year. We plan to achieve full sustainment not later than fiscal year 2008.

Our Facilities Restoration and Modernization program repairs or replaces damaged or obsolete facilities and implements new or higher standards where necessary. The Restoration and Modernization program applies both military construction and operations and maintenance appropriations to recapitalize our facilities and housing.

Our fiscal year 2004 funding request allows us to achieve a recapitalization rate of 148 years for the Military Departments, down from 149 years in fiscal year 2003, meaning the Department renovates or replaces its facilities an average of every 148 years. We now include the Defense Logistics Agency, DoD Education Activity and Tricare Medical Activity in the calculations, resulting in a corporate rate of 136 years for fiscal year 2004. Our goal remains a 67-year recapitalization rate, consistent with commercial practices, and our current program would achieve that level in fiscal year 2008.

In the near term, obsolete facilities pose risks to mission effectiveness, safety, quality of life, productivity of the workforce, and cost efficiencies, but these risks are mitigated to some degree by eliminating facilities through Base Realignment and Closure (BRAC), facilities demolition programs, and an aggressive acceleration of recapitalization rates in the future years defense program.

Facilities revitalization will take time. However, the indicators are trending in the right direction, showing that we are indeed making progress. With continuing attention to our Defense Facilities Strategic Plan and current planning guidance, we can achieve our goal.

Comparison of Military Construction and Family Housing Requests
(President's Budget in \$ Millions – Budget Authority)

Military Construction	4,054	4,480
NATO Security Investment Program	168	169
Base Realignment and Closure	545	370
Family Housing Construction/Improvements	1,341	1,237
Family Housing Operations & Maintenance	2,877	2,780
Homeowners Assistance	0	0
Family Housing Improvement Fund	2	0.3
TOTAL	8,987	9,036

TAKING CARE OF OUR PEOPLE

Our priority is to support the warfighter, ensure superior living and working conditions and enhance the safety of the force and quality of the environment. At the outset of this Administration, the President and Secretary Rumsfeld identified military housing as a top priority for the Department. Sustaining the quality of life of our people is crucial to recruiting, retention and readiness. To that end, the Department is committed to providing quality housing using the

established three prong approach – increased basic allowance for housing (BAH), increased housing privatization, and sustained military construction for housing.

In January 2001, the Department had about 180,000 inadequate family housing units. Today, through housing privatization and our military construction program, we have reduced that number to roughly 163,000. This number will continue to come down as we pursue the Secretary's goal of eliminating inadequate housing by 2007.

We remain committed to reducing – and then eliminating – the out-of-pocket housing costs for the average military member through changes in the basic allowance for housing, a key component of the Department's approach to quality housing. The fiscal year 2004 budget request includes necessary funding to continue lowering out-of-pocket housing costs for members living off-base from 7.5 percent in 2003 to 3.5 percent in 2004. By 2005, the typical member living in the private sector will have zero out-of-pocket housing expenses. Eliminating out-of-pocket expenses is good for military personnel, but also serves to strengthen the financial profile of the housing privatization program by providing members the ability to pay appropriate market rents.

Privatizing military housing is a priority for the President and the Secretary and is an integral part of the Administration's Management Plan. Our housing privatization program is crucial to providing a decent quality of life for our service members.

We believe our housing privatization efforts have gained "traction" and are achieving success. As of February 2003, we have awarded 18 projects, which include 27,884 military family housing units. We also have one award in its final stage of approval – Kirtland AFB, New Mexico – which we expect to award next month. We project more than 20 more privatization awards each in fiscal years 2003 and 2004 – bringing our cumulative total to about 102,000 units privatized.

Projects at five installations have their renovations and construction completed: Naval Air Station Corpus Christi/Naval Air Station Kingsville, Texas, Naval Station Everett Phases I and II, Robins Air Force Base, Georgia, Lackland Air Force Base, Texas, and Dyess Air Force Base, Texas. During fiscal year 2004, we expect several other bases to have their renovations and construction completed or close to completion, including those at Fort Carson, Colorado and Naval Complex New Orleans, Louisiana.

Our policy requires that privatization projects yield at least three times the amount of housing as traditional military construction for the same amount of appropriated dollars. Recent projects have demonstrated that leveraging is normally much higher. The first 17 projects we've analyzed thus far reflect an average leverage ratio of over 10 to 1. Tapping this demonstrated leveraging potential through housing privatization has permitted the Department, in partnership with the private sector, to provide housing for about \$276 million of military construction funding that would otherwise have required over \$2.7 billion for those awarded projects if the traditional military construction approach was utilized.

More important than the raw numbers is the reaction of uniformed personnel and their families to the housing developed under the initiative. It is overwhelmingly positive based on the high quality product produced by the projects.

Military construction is another tool for resolving inadequate military housing. In fiscal year 2004, we are requesting \$4.0 billion in new budget authority for family housing construction and operations and maintenance. This funding will enable us to continue operating and maintaining the Department's family housing as well as meeting the goal to eliminate inadequate housing by 2007 – three years earlier than previously planned.

We also are improving housing for our unaccompanied service members through increases in bachelor housing funding. The Department's fiscal year 2004 budget request includes funding that would build or renovate over 12,000 bed spaces. The Services are making significant progress toward meeting, or have already met, the Department's previous goal for eliminating gang latrine conditions for permanent party unaccompanied members. Additionally, the Services are currently preparing Barracks Master Plans, similar to the Family Housing Master Plan, for managing their inventory and outlining their plans for eliminating inadequate permanent party barracks by 2007.

As we gain momentum in privatizing family housing, we also are exploring and encouraging the possibility of privatizing barracks that support our unaccompanied service members. The Department strongly supports barracks privatization and has attempted to overcome barriers that impede our ability to execute a program.

The Secretary of the Navy was authorized by the National Defense Authorization Act for Fiscal Year 2003 to execute a pilot program for barracks privatization that includes authority for the payment of partial basic allowance for housing. The Navy considers barracks privatization a key part of their "Homeport Ashore Initiative". We have discussed with the Navy some of their plans in this area, and we expect to review a pilot proposal later this year.

We recognize that a key element in maintaining the support of the Congress and of the private sector is the ability to define adequately the housing requirement. The Department's longstanding policy is to rely primarily on the private sector for its housing needs. Currently, two-thirds of military families reside in private sector housing, and that number will increase as we privatize the existing inventory of housing units owned by the Military Departments. Only when the private market demonstrates that it cannot provide sufficient levels or quality of

housing should we consider the construction, operation, and maintenance of government-owned housing.

An improved housing requirements determination process, recently approved by the Deputy Secretary, combined with increased privatization, is allowing us to focus resources on maintaining the housing for which we have a verified need rather than wasting those resources duplicating private sector capabilities. The improved housing requirement process is being used by the Department to better determine the number of family housing units needed on installations to accommodate military families. It provides a solid basis for investing in housing for which there is a verified need – whether through direct investment with appropriated funds or through a privatization project.

By aligning the housing requirements determination process more closely with the analysis utilized to determine basic allowance for housing rates, the Department is better positioned to make sound investment decisions necessary to meet the Secretary's goal to eliminate inadequate housing by 2007. Further, as more military families opt to reside in the private sector as housing out-of-pocket expenses decrease for the average member, the Services on-base housing requirement should generally also decline. This migration should permit the Services to better apply scarce resources to those housing units they truly need to retain.

TAKING CARE OF WHAT WE OWN

Sustaining, Restoring and Modernizing Facilities

The Department's program for modernizing military housing is well underway. We are also focused upon improving the work environment through proper facilities sustainment and

recapitalization. As we have seen through the Installations' Readiness Report, the quality of our infrastructure directly affects readiness. Our first priority is to fully sustain our facilities, and we have made significant progress in this area. Full sustainment improves performance and reduces life cycle costs, maximizing the return on our capital investments. Repairing and replacing facilities once they have deteriorated is more expensive. Our recent investments in sustainment and recapitalization, along with continued investment over time, will restore readiness, stabilize and reduce the average age of our physical plant, reduce operating costs and maximize our return on investment.

Despite the challenges, we have preserved funding for facilities sustainment and restoration and modernization. The Department is requesting \$6.4 billion in fiscal year 2004 for sustainment. The budget funds sustainment at 94% of standard benchmarks. That is not an average of the Military Departments – it is the floor we established for all the Military Departments, an improvement over last year, and we have a plan to achieve full sustainment by 2008.

But sustainment alone is not enough. Even well-sustained facilities eventually wear out or become obsolete, and we have a lot of facilities in that condition now. So, in addition to sustainment, we must also restore and modernize facilities. Some of this recapitalization is critical and cannot wait. Our fiscal year 2004 funding request of \$3.4 billion for restoration and modernization maintains our commitment to improving the work environment while weighing the requirements against other Departmental priorities.

We measure the rate of restoring and modernizing against an average expected service life of our inventories, which we calculate at 67 years. The fiscal year 2004 Military Department recapitalization rate is about 148 years, compared with 149 years for fiscal year 2003. With the

Defense Agencies included, our corporate rate for fiscal year 2004 is down to 136 years, an improvement over last year's request. Our program funds the 67-year rate in fiscal year 2008, and between now and then we plan to follow a smooth glide path to that level. This past year, we thoroughly reviewed and standardized our Facilities Recapitalization Metric, so we can track and report on our progress toward the goal with confidence.

Improved Facilities Footprint Management

We continue to explore methods for reducing our footprint and better utilizing existing facilities. Demolition is a valuable tool for eliminating excess and obsolete facilities. From fiscal years 1998 through 2002, the Services demolished and disposed of over 75 million square feet of unnecessary, deteriorated facilities, resulting in significant cost avoidance in sustainment and restoration and modernization expenses to the Department. We expect to exceed our goal of demolishing 80.1 million square feet by the end of 2003, and we are requesting about \$80 million in fiscal year 2004 to carry on this successful program.

While we use demolition for excess facilities, the enhanced-use leasing program enables us to make better use of underutilized facilities. As we transform the way we do business, the Department remains committed to promoting enhanced-use leasing where viable. This type of lease activity allows us to transform underutilized buildings and facilities, with private sector participation, into productive facilities. Examples of these opportunities include, but are not limited to, the creation of new or joint-use opportunities for office space, warehouses, hotels/temporary quarters, vehicle test tracks, wind tunnels, energy generation plants, recreational playgrounds, and sports venues. Additional benefits can accrue by accepting base operating support or demolition services as in-kind consideration; thereby, reducing the appropriations

needed to fund those activities. Finally, enhanced-use leasing provides opportunities to make better use of historic facilities and improve their preservation as both cash and in-kind consideration may be used for those purposes. The Army is a leader in this regard, with pilot projects being discussed at Fort Sam Houston and Walter Reed Army Medical Center.

Improving Energy Management

As we sustain, restore and modernize facilities, part of our focus is to reduce our energy consumption and associated costs. To accomplish this, the Department is developing a comprehensive energy strategy that will continue to optimize utility management by conserving energy and water usage, improve energy flexibility by increasing renewable energy usage and taking advantage of restructured energy commodity markets as opportunities present themselves and modernize our infrastructure by privatizing our deteriorated and outdated utilities infrastructure where economically feasible.

With approximately 2.2 billion square feet of facilities, the Department is the single largest energy user in the nation. Conserving energy will save the Department funds that can be better invested in readiness, facilities sustainment, and quality of life.

Our efforts to conserve energy are paying off. In fiscal year 2002, military installations reduced consumption by 3.1 percent, resulting in a 6 percent decrease in the cost of energy commodities from the previous year. With a 25.5 percent reduction in fiscal year 2002 from a 1985 baseline, the Department is on track to achieve the 2010 energy reduction goal for buildings of 35 percent per square foot.

The Department has a balanced program for energy conservation—installing energy savings measures using appropriated funding and private-sector investment—combined with

using the principles of sustainable design to reduce the resources used in our new construction.

Energy conservation projects make business sense, historically obtaining about four dollars in life-cycle savings for every dollar invested. The fiscal year 2004 budget contains \$69.5 million for the Energy Conservation Investment Program (ECIP) to implement energy saving measures at our facilities. This is a 39 percent increase from fiscal year 2003 budget request of \$50 million.

The Department will also continue to pursue renewable energy technologies such as fuel cells, geothermal, wind, solar, and purchase electricity from these environmentally-friendly renewable sources when it is life-cycle cost-effective. In fiscal year 2002, military installations used 4.5 trillion British Thermal Units of renewable energy, doubling the amount from the previous year. The pursuit of renewable energy technologies is critical to the Department's and Nation's efforts in achieving energy flexibility.

A key part of our energy program is our utilities management efforts, focused on modernizing systems through utilities privatization. By incorporating lessons learned and industry feedback, the Department has strengthened efforts to take advantage of private sector innovations, efficiencies and financing. We have over 2,600 systems with a plant replacement value of approximately \$50 billion. Thirty-eight (38) systems have been privatized using the utilities privatization authority in current law. Another 337 systems were privatized using other authorities, and privatization solicitations are ongoing for over 850 utility systems.

The Services plan to request privatization proposals for the remaining 450 systems over the next two years. We are on track to complete privatization decisions on all the available water, sewage, electric and gas utility systems by September 2005. Congressional support for this effort in fiscal year 2004 is essential to maintain the procurement momentum and industry interest, as well as maximize the benefits of modernizing the Department's utility infrastructure.

Improving Environmental Management

The Department continues to be leaders in environmental management. We are proud of our environmental program at our military installations throughout the world, and we are committed to pursuing a comprehensive environmental program.

Environmental Program - Summary of Request
(President's Budget in \$ Millions - Budget Authority)

Cleanup	1,278	1,273
BRAC Environmental ¹²	519	412
Compliance	1,701	1,603
Pollution Prevention	247	173
Conservation	152	153
Technology	205	191
Total	4,102	3,805

In fiscal year 2004, we are requesting \$3.8 billion for environmental programs. This includes \$1.3 billion for cleanup, \$0.4 billion for BRAC environmental, \$1.6 billion for compliance; about \$0.2 billion for pollution prevention, and about \$0.2 billion for conservation.

By the end of fiscal year 2002, we reduced new environmental violations by 77 percent from the 1992 baseline. The Department continues to reduce the percent of enforcement actions received per inspection, with roughly one enforcement action per 12.5 inspections, down from one for every three inspections in 1994. We have also improved our treatment of wastewater and the provision of drinking water for those systems we control.

We reduced the amount of hazardous waste we generate by over 64 percent since 1992, and we are avoiding disposal costs by diverting non-hazardous solid waste from landfills by recycling and other approved methods. These pollution prevention techniques continue to save

¹ Funding levels reflect total requirement (TOA).

the Department needed funds as well as reduce pollution. As an example, the Department saved about \$95 million in disposal costs in 2001. We have increased the number of alternative fueled vehicles that we use in order to reduce the demand for petroleum, and we continue to reduce the number and amount of toxic chemicals we release through our industrial processes and training operations.

The Department's commitment to its restoration program remains strong as we reduce risk and restore property for future generations. We are exploring ways to improve and accelerate cleanup with our regulatory and community partners. Achieving site closure and ensuring long-term remedies are challenges we face. Conducting environmental restoration activities at each site of the installations in the program requires accurate planning, funding, and execution of plan. The Department must plan its activities years in advance to ensure that adequate funding is available and used efficiently.

The Defense Environmental Restoration Program goals assist the Components in planning their programs and achieving funding for activities. We achieved our goal to reduce 50 percent of high risk sites at active installations by the end of fiscal year 2002 and are on track to achieve 100 percent by the end of fiscal year 2007. At BRAC installations, final remedy for 90 percent of the sites was in place by the end of fiscal year 2001, and we anticipate completion by the end of fiscal year 2005.

We also are working to mitigate unexploded ordnance (UXO) on our military ranges. Our operational ranges are designed to train and make combat-ready our Nation's warfighters and prepare them as best as we can for combat. UXO on ranges is a result of our military preparedness training activities. However, we are actively seeking ways to minimize the amount of UXO on our operational test and training ranges. The Department is developing policies on

the periodic clearance of UXO for personnel safety and to ensure chemical constituents do not contaminate groundwater.

For the areas other than operational ranges which have a UXO challenge – our Formerly Used Defense Sites, BRAC installations, and closed ranges on active installations – we are currently developing the reports requested by Congress in the National Defense Authorization Act for Fiscal Year 2002. We will have an inventory of our munitions response sites, cost estimates, a comprehensive plan, and will define the current technology baseline with a roadmap for future action.

In addition, we are developing new technologies and procedures through the Environmental Security Technology Certification Program and the Strategic Environmental Research and Development Program. These, along with the Army and Navy's Environmental Quality Technology Program, have enabled us to make tremendous strides for realizing our goals of reducing cost, completing projects sooner and sustaining the safety of our communities.

As you may know, the Defense Science Board (DSB) assessed the UXO issue in 1998. Last year, the Under Secretary of Defense for Acquisition, Technology and Logistics commissioned a new DSB Task Force to look at this entire issue. Their report is due for completion this summer, and we look forward to acting on their recommendations.

Beyond the dollars, we have implemented a new environmental management systems (EMS) policy as a part of the Administration's emphasis that enables us to train and operate more effectively and efficiently, while reducing our impact on the environment. Through this "systematic approach," we can continually improve both our mission performance and our environmental management. We are implementing this across all military missions, activities and functions to modernize the way we manage the environment entrusted us by the American

people, and we are on-track to achieve the EMS goal established in Executive Order 13148. We hope to reach the level where our mission activities are so well managed from an environmental perspective that our environmental impacts would be virtually eliminated and remove our liabilities from long-term compliance bills. EMS is the systematic approach to achieve this goal and resolve the perceived conflict between mission and environmental stewardship.

We also look to our stakeholders and government agencies to help us better identify our environmental management issues. On February 5th, we hosted a defense environmental forum at the National Defense University. At the meeting, recognized leaders from federal, tribal, state and local governments, the private sector, academia, the scientific and research community, and other non-governmental organizations exchanged insights on pressing environmental issues facing the Department. Our objective was to identify and diagnose the major issues associated with the twin imperatives of military readiness and environmental protection. This new initiative will improve our communication with stakeholders and enable us to more effectively manage our mission and environmental challenges.

Another significant environmental accomplishment is in the area of natural resources. The Department has been managing natural resources for a long time – we currently manage more than 25 million acres. In October of 2002, we issued a new policy for “Integrated Natural Resource Management Plans”, or “INRMPS”, used by the Department to protect natural resources on our installations. Previous guidance emphasized early coordination with all stakeholders, the U.S. Fish and Wildlife Service and appropriate state agencies to ensure that we meet the conservation requirements of the Sikes Act and focus on the preservation and maintenance of healthy and fully functional ecosystems. The new guidance emphasizes coordination requirements, reporting requirements, implementation requirements, and other

miscellaneous requirements. The miscellaneous requirements highlight the need to ensure that we manage our assets in accordance with the INRMPs to ensure that there is no net loss in the capability of military installation lands to support the military mission of the installation, in this case test and training opportunities, as well as preserving the natural resources entrusted to us.

We have completed integrated natural resource management plans at the vast majority of bases. We also are pursuing the completion of integrated cultural resource management plans at our installations to ensure that we identify and preserve historical treasures. This will allow us to test and train to maintain a ready military force without fear of endangering our heritage. We acknowledge there are still some very complex and difficult challenges, but we are making progress.

Preserving Ranges and Training Areas

The Department takes seriously the fact that an important part of our national defense mission is to defend and preserve the natural environment entrusted to us. Our personnel take understandable pride in their environmental record – a record with documented examples of impressive management of critical habitats and endangered species. However, the impacts on readiness must be considered when applying environmental regulations to military-unique training and testing activities. The ever-growing problem of “encroachment” on our military training ranges is an issue for us here at home, as well as at our overseas training locations.

We are addressing the effects that encroachment poses to our ability to “train as we fight.” This effort, known as the Readiness and Range Preservation Initiative, is the Department’s broad-based effort to find solutions to a variety of pressures on our test and training lands.

This past year, Congress enacted two legislative provisions that allow us to cooperate more effectively with local and state governments, as well as private entities, to plan for smart growth surrounding our training ranges. These provisions allow us to work toward preserving habitat for imperiled species and to limit development to land uses that are compatible with our training and testing activities. Congress also provided the Department a temporary exemption from the Migratory Bird Treaty Act for the incidental taking of migratory birds during military readiness activities. These were three of the eight provisions the Department sought approval on as part of our Readiness and Range Preservation Initiative in the National Defense Authorization Act for Fiscal Year 2003.

Today, we are developing a long-term process to address encroachment by creating a multi-year, comprehensive program to sustain training and testing. This program will pursue not only legislative clarification but also regulatory and administrative changes, internal policy and procedure adjustments, and an active stakeholder engagement strategy.

The Administration will seek legislative clarification where laws are being applied beyond their original legislative intent. We believe that modest legislative reforms are needed to ensure the preparedness of this Nation's Armed Forces, and we will continue to work with Congress to seek enactment of legislation to address these concerns.

We are in the process of evaluating all of the circumstances that create problems for our test and training ranges. Some of these may be solved with administrative or regulatory changes. We are working with the Military Services, other federal agencies, tribes, states and local communities to find ways to better balance military, community and environmental needs.

The Department also is developing a suite of internal policy and procedure adjustments, the capstone of which is a new Department of Defense Directive recently signed by the Deputy

Secretary to ensure long-range, sustainable approaches to range management. In addition, we intend to strengthen and empower management structures to deal with range issues. We also have taken a pro-active role to protect bases from urbanization effects by working with local planning and zoning organizations and other stakeholders.

The actions taken by Congress last year will greatly assist in this process by allowing us to work toward preserving habitat for imperiled species and to limit development to land uses that are compatible with our training and testing activities. The Services will identify opportunities to utilize these new authorities. We plan to convene a workshop early this year with key land conservation organizations and representatives from state and local communities to develop an implementing Memorandum of Understanding and sample cooperative agreements that can be utilized under the new authorities.

The Department also is planning to address the long-term sustainment process by reaching out to and involving other stakeholders. We need to improve the understanding of readiness needs among affected groups such as state and local governments, and non-governmental organizations. We must establish dialogue and form partnerships with these groups to reach our common goals by focusing on areas of common interest. This will enable us to take a proactive stance against encroachment and protect our bases into the future.

IMPROVING BUSINESS PRACTICES

Adopting a Common Approach to Managing Real Property

We are undertaking an aggressive initiative to make management of our real property more efficient and effective. This project is called the Real Property Enterprise Solution (RPES), and is part of the larger Financial Management Modernization Program.

Our vision is to improve the accuracy, reliability, timeliness, and usefulness of real property information necessary by all levels of decision-making to support the Department's overall mission, resources, accounting, accountability and reporting requirements. We will accomplish our vision through development and implementation of a standard, Defense-wide real property enterprise architecture resulting in: standard business practices and processes, standard categorization, definitions and terminology and a standard system (or systems).

We are teaming with the Office of the Under Secretary of Defense (Comptroller) to develop and update our plans. We are 80 percent finished with our enterprise architecture for real property. An enterprise architecture catalogs the current real property activities and leads to identification of the optimal business processes and technical standards, with a transition plan showing how to get from the current to the optimal state, recognizing any business constraints. By the end of this calendar year, we plan to complete the market research and solution assessment and expect field a pilot system or systems in calendar year 2005 for a significant portion of the real property business area.

As part of the reform of the Department's business practices, we developed the Facilities Sustainment Model (FSM) and the Facilities Recapitalization Metric (FRM). The Facilities Sustainment Model and the Facilities Recapitalization Metric, based on standard commercial processes, improve the way we inventory and account for facilities and more clearly defines our facilities sustainment and recapitalization requirements. The Services have used FSM to define

their sustainment requirements since fiscal year 2003, and the Defense Agencies were included for fiscal year 2004.

This past summer we thoroughly reviewed and standardized the FRM, so we can track and report on our progress toward our recapitalization goals with confidence. The revised metric is now used throughout the Department to calibrate the rate at which we restore and modernize facilities and to ensure that all elements of the Department are moving forward toward our corporate goals. With these two new tools, we have finally established a common requirements generation process and a sound method for forecasting funding requirements.

In developing these models, we also changed the program element (PE) structure for fiscal year 2002 budget execution, doing away with the real property maintenance PEs, and creating sustainment and restoration/modernization (recapitalization) PEs. These newly defined program elements align our financial management and accounting cost elements with this new, transformed management structure and permit tying dollars and budgets to performance.

Reducing Cycle Time

An imperative within the acquisition community is to reduce cycle time while also reducing total ownership costs. In the Installations and Environment community, we viewed this as a challenge to improve business processes, enabling resources – both money and people – to be better used elsewhere.

We established an integrated product team (IPT), with the Services and Defense Agencies, to identify alternatives to reduce cycle time for military construction. Facility construction typically takes about five to eight years from requirements determination to beneficial occupancy. We researched and adapted private sector practices, where possible, but in

some cases we may need legislative change. We will urge your consideration of such proposals should they be necessary.

Focusing on Core Competencies

As we consider approaches to better utilize our personnel, competitive sourcing provides a methodology for focusing on our core capabilities. The Department will obtain needed products or services from the private sector where it makes sense. We support the Competitive Sourcing Initiative in the President's Management Agenda. To meet the target initiated by the Office of Management and Budget, the Department has initiated six pioneer projects as alternatives to A-76. The Army's "Third Wave" is an example of our new aggressive approach to identify the best way to do business. We will also announce an additional 10,000 traditional A-76 initiatives this fiscal year. The Services will submit their plans to meet the President's management initiative objectives through the use of A-76 and alternatives in their fiscal year 2005 Program Objectives Memoranda submissions.

Consistent with our approach of focusing on our core competencies, the Department believes our security guard functions could be better accomplished by contractors, freeing our military and civilians to focus on other tasks that will enable us to fight and win wars. We remain supportive of repealing the restriction in 10 U.S.C. 2465 that prohibits the Department from contracting for security guards. The current provision inhibits the Department's ability to quickly increase or decrease the number of security guards, as threat conditions warrant. This provision would provide increased flexibility as the Department continues to enhance anti-terrorism/force protection measures.

TRANSFORMING BASES AND INFRASTRUCTURE

One of the most effective tools we have to transform the military is through the BRAC process. From 1988 through 1995, approximately 387 closure or realignment actions were approved, and the Department has completed each action within its respective statutory deadline. We have rationalized much of our infrastructure through the previous BRACs – but much more needs to be done. We believe the Department has anywhere from 20 to 25 percent excess capacity in its facilities. By removing that excess capacity we hope to save several billion dollars annually. For instance, prior BRAC actions have resulted in net savings to the Department – to the taxpayer – of approximately \$17 billion, with annual recurring savings of approximately \$6 billion.

Continuing to operate and maintain facilities we no longer need diverts scarce resources that could be better applied to higher priority programs – like improving readiness, modernization and quality of life for our Service members. We must utilize every efficiency in the application of available resources to ensure we maintain just what we need to accomplish our missions. In the wake of the attacks of September 11, 2001, the imperative to convert excess base capacity into warfighting ability is enhanced, not diminished.

However, achieving savings is not the only reason to realign and close bases. The more important reason is to enable us to attain the right mix of bases and forces within our warfighting strategy as we transform the Department to meet the security challenges of the 21st century. Transformation requires rationalizing our base structure to better match the force structure for the new ways of doing business.

Congress authorized a Base Realignment and Closure in 2005 to accomplish this “base transformation”. BRAC 2005 should be the means by which we reconfigure our current

infrastructure into one in which operational capacity maximizes both warfighting capability and efficiency. Through BRAC, we will eliminate excess capacity that drains our scarce resources from defense capability.

The process will not be simply a process to reduce capacity in a status-quo configuration, but rather, as the foundation to transformation, it will allow us the opportunity to examine a wide range of options for stationing and supporting forces and functions to make transformation what it truly should be – a “re-tooling” of the base structure to advance our combat effectiveness and make efficient use of our resources. A primary objective of BRAC 2005 process is to examine and implement opportunities for greater joint activity.

Our installations transformation is not limited to the United States. We also are assessing our facilities overseas to determine the proper size and mix. Since 1990, the Department of Defense has returned or reduced operations at about 1000 overseas sites, resulting in a 60 percent reduction in our overseas infrastructure and a 66 percent reduction in Europe, in particular, and we continue to review overseas basing requirements of the Combatant Commanders and examine opportunities for joint use of facilities and land by the Services, consolidation of infrastructure, and enhanced training.

CONCLUSION

Our facilities continue to recover, and we are seeing the results of investments made over the last several years. The Defense Facilities Strategic Plan and our installations management approach has provided a framework that enables us to focus on our overarching goals: taking care of our people, taking care of our facilities and enhancing our business processes. We have

made significant progress toward providing quality housing for our service members, and we are now focused on improving the work environment.

BRAC 05 is our most important initiative to help us accomplish this. By consolidating, realigning and reducing unneeded infrastructure, the Department can focus investments on maintaining and recapitalizing what we actually require, resulting in ready facilities for the warfighters while more prudently using the taxpayer's money.

As we prepare to rationalize our base structure, we also are addressing encroachment issues that impact our ability to effectively utilize our test and training ranges. The Readiness and Range Preservation Initiative is identifying solutions to these challenges. We have developed a plan of action and are proceeding with implementation. A key element of the plan is our proposed legislation that combines military readiness with environmental stewardship.

Our Real Property Enterprise System (RPES) efforts will result in much improved and standardized business practices while enhancing our financial stewardship. Market research and solution assessment should be complete by the end of this fiscal year with pilot fielding of a new system(s) or modification to existing systems to follow.

In closing, Mr. Chairman, I sincerely thank you for this opportunity to outline our successes in military facilities and review our plans for the future. We appreciate your strong support of our military construction program, and I look forward to working with you as we transform our infrastructure.

RECORD VERSION

STATEMENT BY

HONORABLE MARIO P. FIORI
ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS AND ENVIRONMENT)

MAJOR GENERAL LARRY J. LUST
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT
DEPARTMENT OF THE ARMY

MAJOR GENERAL COLLIS N. PHILLIPS
DEPUTY CHIEF, ARMY RESERVE
DEPARTMENT OF THE ARMY

BRIGADIER GENERAL CLYDE A. VAUGHN
DEPUTY DIRECTOR, ARMY NATIONAL GUARD
DEPARTMENT OF THE ARMY

BEFORE THE

SUBCOMMITTEE ON READINESS
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

FIRST SESSION, 108TH CONGRESS

ON THE FISCAL YEAR 2004 BUDGET
MILITARY CONSTRUCTION, ARMY
FAMILY HOUSING, ARMY
MILITARY CONSTRUCTION, ARMY NATIONAL GUARD
MILITARY CONSTRUCTION, ARMY RESERVE
BASE REALIGNMENTS AND CLOSURE (BRAC)

18 MARCH 2003

*NOT FOR PUBLICATION
UNTIL RELEASED
BY THE COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES*



THE HONORABLE MARIO P. FIORI
ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS AND ENVIRONMENT)



Dr. Mario P. Fiori was appointed by President Bush as Assistant Secretary of the Army (Installations and Environment) in August 2001. In this office, he has overall responsibility for the design, construction, operations, maintenance and management of Army installations; privatization of Army family housing, real estate and other infrastructure programs; environmental conservation, compliance, clean-up and site disposal programs and for management of the Army's safety and occupational health programs.

From 1997 to his current appointment, Dr. Fiori was Founder and President of Compass Associates, Inc., a consulting firm specializing in providing enhanced operational safety programs at industrial facilities to improve safety performance, reliability and cost-effectiveness. He provided support to senior corporate executives in business development and strategies.

Dr. Fiori graduated from the US Naval Academy in 1963 and, after serving one year on a diesel submarine, entered the graduate program at Massachusetts Institute of Technology and earned a M.S. in Mechanical Engineering, a Nuclear Engineer Degree, and a Ph.D. in Nuclear Engineering (1968).

He then served in the nuclear submarine force as a department head in attack submarine USS Pargo (SSN 650), Executive Officer in Poseidon missile submarine USS George Washington Carver (SSBN 656), Commanding Officer in attack submarine USS Spadefish (SSN668) and Squadron Commander of Submarine Squadron 4. His shore assignments included: submarine analyst on the CNO staff, DOD representative to the Federal Energy Administration, Special Assistant to President Reagan's Science Advisor, Dr. George Keyworth II, and prior to retirement, Commander, Naval Underwater Systems Center, Newport, RI.

From 1990-1991, he was President of MPF Associates and supported senior corporate executives in developing business strategies. As Senior Fellow at the Hudson Institute, Indianapolis, IN he developed a space surveillance concept.

In 1991, Dr. Fiori joined the Senior Executive Service in the Department of Energy and served as the Departmental Representative to the Defense Nuclear Facilities Safety Board. The Board, a congressionally mandated body, has safety oversight of all DOE weapon's facilities.

In 1993, The Secretary of Energy reassigned Dr. Fiori to be Manager, Savannah River Site, Aiken, SC where he served until 1997. As the Senior Federal Executive, he managed a \$2B annual budget and the diverse activities involving national security, waste management and advanced technology research and development. He managed the federal workforce; interacted with elected officials at federal, state and local levels; conducted work through four major subcontractors, Westinghouse Savannah River Company, Wackenhut Services Inc., University of Georgia and the US Forest Service.

Dr. Fiori is a member of the Association of the U.S. Army, the U.S. Navy League, and Citizens for Nuclear Technology Awareness, the Eagle Alliance, and the American Nuclear Society.



MAJOR GENERAL LARRY J. LUST, USA

Assistant Chief of Staff for INSTALLATION MANAGEMENT

Major General Larry J. Lust, United States Army, is the Assistant Chief of Staff for Installation Management. He assumed this position in July 2002.

Major General Larry J. Lust was born in Moran, Kansas. Upon completion of Infantry Officer Candidate School in 1970, he was commissioned a Second Lieutenant in the Armor Corps. He holds a Bachelor of Science degree from the University of Missouri, and a Master of Science in Logistics Management from Florida Institute of Technology. His professional military education includes Distinguished or Honor Graduate of Infantry OCS, Armor Officer Basic and Advance Courses, Supply Management Officer Course, Logistics Executive Development Course, Force Integration Staff Officer Course, U.S. Army Command and General Staff College, and the Industrial College of the Armed Forces.

Major General Lust has commanded at the company, squadron, DISCOM and COSCOM levels. He served as Commander, Combat Support Squadron, 11th Armored Cavalry Regiment; Commander, Division Support Command, 3d Infantry Division, U.S. Army, Europe; Deputy Commanding General (Support), Joint Task Force-Somalia; Commanding General UN Logistics Support Command; Deputy Commanding General, U.S. Forces-Somalia. Major General Lust served as Commanding General, 3d Corps Support Command; Deputy Chief of Staff for Logistics, U.S. Army, Europe, 7th Army; and Director of Logistics and Security Assistance, Headquarters, U.S. European Command, Stuttgart-Vaihingen, Germany, and Assistant Deputy Chief of Staff, G-4, Department of the Army, Washington, DC.

Key staff assignments include Chief, Supply and Maintenance Division, Office of the Deputy Chief of Staff for Logistics, U.S. Army, Europe; Chief, Tank Automotive, and Armament Division, Office of the Deputy Chief of Staff for Logistics, Department of the Army, Washington, D.C.; Force Integration Staff Officer, Office of the Deputy Chief of Staff for Operations and Plans, Department of the Army, Washington, D.C.

Major General Lust's initial tour of duty was as Training Officer, 19th Battalion, 5th Training Brigade, Fort Knox, Kentucky. He was then assigned to Vietnam where he served as Rifle Platoon Leader, 1-327th Infantry Battalion, 101st Airborne Division; Assistant S2, 196th Light Infantry Brigade; Assistant S3, 3-21st Infantry Battalion (Task Force Gimlet); and Tank Company Advisor, 22d Tank Regiment, Army of Vietnam. At Fort Knox, Kentucky, he served as an Armored Cavalry Platoon Leader, Troop Executive Officer, and Squadron S4 with 7-1st Air Cavalry Squadron. Following the Armor Officer Advance Course, he served as the S3 Air, S4, and Commander, Company A, 3-63d Armor Battalion, 3d Infantry Division, Augsburg, Germany. Returning to the United States, he attended CGSC and was assigned to Fort Riley, Kansas, where he served as a Forward Area Support Coordination Officer, DISCOM S3, and Executive Officer, 1-34th Armor Battalion, 1st Infantry Division.

Major General Lust's awards and decorations include the Combat Infantryman's Badge, Defense Distinguished Service Medal, Defense Superior Service Medal, Legion of Merit (with OLC), Bronze Star, Purple Heart, Meritorious Service Medal (with three OLC), Air Medal, Army Commendation Medal (with two OLC), Parachutist Badge, Pathfinder Badge, and various service and foreign awards.



Deputy Chief, Army Reserve (DCAR IMA)

Major General Collis N. Phillips Deputy Chief, Army Reserve
(Individual Mobilization Augmentee)

Major General Collis Nimrod Phillips was commissioned an Infantry Officer upon graduation from Officer Candidate School (OCS) in 1969, after serving as an enlisted soldier for one year. As a commissioned officer in active duty, he served as Motor Officer, Executive Officer and Company Commander with the U.S. Army Training Center, Fort Bragg, N.C.

Major General Phillips began his career in the Army Reserve in 1976 as Senior Instructor, Military Occupational Specialty Department, 2070th U.S. Army Reserve Forces School, Fort Belvoir, Va. Other assignments included Labor Officer, 310th Theater Area Support Command (TAACOM), Commander, 2d Battalion, 317th Regiment, 1st Brigade, 80th Division; Deputy Commander, 2d Brigade, 80th Division; Assistant Chief of Staff for Services, 310th TAACOM; Deputy Chief of Staff for Personnel, 310th TAACOM; Commander, 300th Support Group (Area), and Chief of Staff, 310th TAACOM.

On 24 May 1999, he became the Commanding General of the 65th United States Army Regional Support Command, Fort Buchanan, Puerto Rico. This command has more than 5,000 soldiers covering the entire island of Puerto Rico. He became the Deputy Chief, Army Reserve (Individual Mobilization Augmentee), Office of the Chief, Army Reserve, in Washington, DC, in May 2002.

His military education includes the Infantry and Quartermaster Basic and Advanced Courses, Tactical Integration Courses at the U.S. Army Intelligence Center and School, the Command and General Staff College, and the National War College. Major General Phillips also holds Master's and Doctorate Degrees in Economics from Syracuse University.

His current civilian occupation is Chief, Office of Policy and Programs, Office of the Secretary, U.S. Department of Labor, Washington, DC. His primary responsibility is to promote equality and opportunities for the sixty-four million women in the United States labor force.

Among his awards are the Meritorious Service Medal with Silver Oak Leaf Cluster, the Army Commendation Medal with three Oak Leaf Clusters, the Army Achievement Medal with one Oak Leaf Cluster and the Good Conduct Medal.



Deputy Director, Army National Guard

Brigadier General Clyde A. Vaughn



Brigadier General Clyde A. Vaughn assumed duties as the Deputy Director, Army National Guard, National Guard Bureau, Washington, DC in September 2002. As Deputy Director, he is responsible for assisting the Director, Army National Guard in formulating, developing and coordinating all programs, policies, and plans affecting the Army National Guard and its more than 350,000 citizen-soldiers.

Born in Columbia, Missouri, Brigadier General Vaughn enlisted in the Missouri Army National Guard in 1974. Brigadier General Vaughn was commissioned through the Officer Candidate Course in August 1974. Early in his career he served at the state level in a variety of positions including Platoon Leader, 1221st Transportation Company; Platoon Leader, C and A Companies of the 1140th Engineer Battalion; and Reconnaissance Officer, Headquarters Company of the 1140th Engineer Battalion. His career at the state level culminated as the Exercise Officer, 193rd Infantry Brigade. He was assigned as the Overseas Deployment Training Manager for the Army National Guard at National Guard Bureau in July 1989. He subsequently served in National Guard Bureau-level positions ranging from Chief of the Plans Section, Operations and Exercises Branch, Operations Division, to Chief of the Operations Division. Prior to assuming his current assignment, he also served as the Deputy Chief of Staff for Reserve Affairs-National Guard, United States Army South and Special Assistant for Reserve Affairs United States Southern Command, Panama; Commander, Exercise Support Command and Deputy Chief of Staff-Reserve Affairs-National Guard, United States Army South, Panama; and Deputy Director for Operations, Readiness and Mobilization, Office of the G3/G5 United States Army.

Brigadier General Vaughn's awards and decorations include the Distinguished Service Medal, the Legion of Merit with 2 Oak Leaf Clusters, the Meritorious Service Medal with 4 Oak Clusters, The Army Commendation Medal, the Army Achievement Medal with Oak Leaf Cluster, the Army Reserve Components Achievement Medal with 5 Oak Leaf Clusters, the Armed Forces Reserve Medal with Silver Hourglass, the Army Service Ribbon and the Army Staff Identification Badge.

His civilian education includes a Bachelor's Degree in Education from Southeast Missouri State College and a Master's Degree in Public Administration from Shippensburg University. His military education includes the Officer Basic and Advanced Courses, the Command and General Staff College and the Army War College.

Mr. Chairman and members of the subcommittee, it is a pleasure to appear before you to discuss the Active Army and Reserve Components' military construction budget request for Fiscal Year 2004. This request includes initiatives of considerable importance to The Army, as well as this Committee, and we appreciate the opportunity to report on them to you.

Our budget provides resources in our construction and family housing programs essential to support The Army's role in our National Military Strategy and our role in the Global War on Terrorism. The budget supports The Army's Vision and our Transformation strategy.

The program presented herein requests Fiscal Year 2004 authorization of appropriations and appropriations of \$1,536,010,000 for Military Construction, Army (MCA); \$1,399,917,000 for Army Family Housing (AFH); \$168,298,000 for Military Construction, Army National Guard (MCNG); and \$68,478,000 for Military Construction, Army Reserve (MCAR).

The Army has begun one of the most profound periods of transformation in its 227-year history. In 1999, we published The Army Vision --- People, Readiness, and Transformation --- that defined how we meet the Nation's military requirements today and into the future. After three years, we are on the road to implement the self-transformation that will allow us to continue to dominate conventional battlefields, but also provide the ability to deter and defeat adversaries who rely on surprise, deception and asymmetric warfare to achieve their objectives.

The attacks against our Nation and the ongoing Global War on Terrorism validated The Army's Vision and our Transformation. To meet the challenges of Army Transformation and to carry out today's missions at home and abroad, The Army must sustain a force of high quality, well-trained people; acquire and maintain the right mix of weapons and equipment; and maintain effective

infrastructure and power projection platforms to generate the capabilities necessary to meet our missions. Taking care of soldiers and families is a readiness issue and will ensure that a trained and qualified soldier and civilian force will be in place to support the Objective Force and the transformed Army.

Installations are a key component in all three tenets of The Army Vision. They are the operational and service support centers where our soldiers and civilians work, live, and train; and from which we deploy, launch, and accomplish our missions. Our worldwide installations structure is inextricably linked to the Transformation of The Army and the successful fielding of the Objective Force.

Army installations, both Active and Reserve Component, must fully support our war fighting needs, while at the same time provide soldiers and their families with a quality of life that equals that of their peers in civilian communities. The Army Vision begins and ends talking about the well-being of people. Our installations are the hometowns to many of our people. To improve our installations, we realized we had to transform installation management to improve the way we operate and manage this important resource.

In support of the Transformation of Army installations, on October 1, 2002, The Army activated the Installation Management Agency (IMA). This activation symbolized a radical transformation in how The Army manages installations. Through the IMA, The Army has created a corporate structure for managing its installations. By shifting that responsibility from the 14 formerly land-holding major commands, the IMA seeks to enhance effectiveness in installation management, achieve regional efficiencies, eliminate the migration of installation support dollars, and provide consistent and equitable services and support.

Major Commanders can now focus solely on their primary missions. Though the major commands no longer have a primary responsibility for installation management, the support they receive from installations is a

paramount mission of the IMA. The IMA exists to support and enable mission commanders. The senior mission commander on each installation is part of the rating chain for the garrison commander of that installation. The most senior commanders of the major commands, as well as the Director of the Army National Guard and the Chief of the Army Reserve, also sit on an Installation Management Board of Directors, providing oversight and guidance to the operations of the IMA.

The Army's transformation of installation management represents a significant paradigm shift in the way The Army manages installations. It represents a new commitment to installation management as a key component of Army Transformation. Mission readiness no longer competes with installation management tasks; and the soldier's well-being and quality of life on the installations does not compete with the mission. It will allow us to provide for our soldiers and their families and to permit us to implement our facilities strategy.

FACILITIES STRATEGY

The Army's Facilities Strategy (AFS) is the centerpiece of our efforts to fix the current state of Army facilities over 20 years. It addresses our long-term need to sustain and modernize Army-funded facilities in both Active and Reserve Components by framing our requirements for sustainment, restoration and modernization (SRM) using operations and maintenance (O&M) and military construction (MILCON) funding. The AFS addresses sustainment, recapitalization, quality, and quantity improvements so that The Army will have adequate facilities to support Transformation and our 21st Century missions.

The first objective of the strategy requires us to halt further deterioration of our facilities. Our sustainment funding, which comes from the Operation and Maintenance (O&M) SRM accounts, has improved. Our budget request funds 93% of our requirements in Fiscal Year 2004. This level of funding may be sufficient to slow further deterioration of Army facilities. We use the Installation

Status Report (ISR) to rate the condition of our facilities. A C-1 quality rating indicates facilities support mission accomplishment; a C-2 quality rating indicates facilities support the majority of assigned missions; a C-3 quality rating indicates facilities impair mission performance; and a C-4 rating indicates facilities that significantly impair mission performance. Currently, The Army's overall quality rating is C-3 (impairs mission performance). We must have sufficient O&M SRM resources to sustain our facilities and prevent facilities from deteriorating further, or we put our MILCON investments at risk.

The second objective of our strategy addresses improving recapitalization of our facilities to a 67-year cycle. This will ensure we have adequate facilities to keep pace with future force structure changes and weapons modernization programs. The focus is on The Army's most obsolete infrastructure, such as vehicle maintenance facilities, Army National Guard Readiness Centers, and Army Reserve Centers. Unfortunately, our budget resources limit our recapitalization rate to 144 years for Fiscal Year 2004.

The third objective is to raise The Army facilities from the current C-3 quality rating (impairs mission performance) to an overall C-2 quality rating (supports majority of assigned missions) by the end of 2010. This will be accomplished by bringing a focused set of facilities to C-1 (supports mission performance) during that timeframe. Since we cannot afford a quick fix to buy down the SRM backlog, we will centrally manage resources towards focused investments. This capital investment requirement will primarily require MILCON funding, supplemented by O&M SRM project funding.

The fourth objective is to reduce facility shortfalls where they exist over the entire 20-year strategy. These shortfalls are a result of facilities modernization not keeping pace with our weapons modernization and supporting force structure. Ranges and training facilities are an example.

Modest MILCON investment will be made in Fiscal Year 2004 for these objectives. These four objectives will enable us to improve the health of Army real property and the ability to successfully support our worldwide missions and our soldiers. This year, our highest priority went to sustainment to achieve a 93% funding level.

In addition to implementing our facilities strategy, we continue our policy of eliminating excess facilities throughout the entire Army to allow us to use our limited resources where they have the most impact. During Fiscal Years 1988-2003, our footprint reduction program, along with the base realignment and closure process (including overseas reductions), resulted in the disposal of over 400 million square feet worldwide from our Fiscal Year 1990 peak of 1,157,700,000 square feet. In Fiscal Year 2004, we plan to reduce an additional 2.7 million square feet. We continue our policy of demolishing at least one square foot for every square foot constructed.

MILITARY CONSTRUCTION, ARMY (MCA)

This year's MCA program focuses on The Army's Vision and four major categories of projects: people, readiness, transformation, and other worldwide support. I will explain each category in turn.

PEOPLE

Fifty percent of our MCA budget is dedicated to providing for the well-being of our soldiers, their families, and civilians. We are requesting 23 barracks (plus an additional one for transformation), a dining facility and 2 physical fitness centers. These projects will improve not only the well-being of our soldiers and families, but also the readiness of The Army. We are requesting \$776.2 million for these projects.

WHOLE BARRACKS RENEWAL PROGRAM: The Army continues its major campaign to modernize barracks to provide enlisted permanent party soldiers with quality living environments. The new complexes provide increased personal privacy, larger rooms, closets, new furnishings, adequate parking, and landscaping. In addition, administrative offices are separated from the barracks. With the approval of our budget, \$737.9 million, as requested, 79% of our barracks requirement (including the transformation barracks), will be funded at the new standard for our permanent party soldiers. Between Fiscal Years 2005 and 2009, we plan to invest an additional \$3.5 billion in MCA and host nation funds. While we are making considerable progress at installations in the United States, we will request increased funding for Germany and Korea in future budgets to compensate for the fact that these areas have been historically funded at lower levels than installations in the United States. A large portion of the remaining modernization effort - 37% - is in overseas areas.

In Fiscal Year 2004, we are planning 23 barracks projects as part of our barracks modernization program, including 7 projects in Europe (one of which supports our Efficient Basing East initiative) and 3 projects in Korea. This will provide new or improved housing for at least 5,500 soldiers. The installations with the largest investment are Fort Bragg, North Carolina, with \$102 million (3 projects), and Schofield Barracks, Hawaii, with \$98 million (2 projects). At these installations, large soldier populations and inadequate barracks require sustained high investment to provide quality housing. Barracks projects are also requested for Fort Hood, Texas; Fort Riley, Kansas; Fort Campbell, Kentucky; Fort Lewis, Washington; Fort Richardson, Alaska; Fort Drum, New York; and Fort Stewart, Georgia. A barracks project supporting Transformation is also requested at Fort Wainwright, Alaska. Although we are requesting authorization for all phases of a multi-phase barracks complex at Fort Drum and Fort Bragg, we are only requesting the appropriation needed for the Fiscal Year 2004 phase. Our plan is to award each complex, subject to subsequent appropriations, as a single contract

to gain cost efficiencies, expedite construction, and provide uniformity in building systems.

COMMUNITY FACILITIES: Our budget request includes a dining facility at Fort Meade, Maryland, for \$9.6 million. Also included are two physical fitness centers at Hohenfels, Germany (\$13.2 million) and Fort Stewart, Georgia (\$15.5 million) to improve soldier fitness and community wellness. The physical fitness center at Fort Stewart has been selected as a pilot project for the demonstration program for the reduction of long-term facility maintenance costs. We believe this demonstration program will decrease our maintenance expenses and increase the quality of our facilities. This project is one of three included in Fiscal Year 2004. An Army Reserve and a National Guard demonstration project are also included in the budget.

READINESS

In Fiscal Year 2004, there are 11 projects, \$153 million, to ensure The Army is deployable, trained, and ready to respond to meet its national security mission. The projects provide enhanced training and readiness via live fire ranges and simulators, maintenance and test facilities, and a deployment facility.

To improve soldier training, we are requesting \$45.8 million to construct five training and readiness projects. Our request includes Modified Record Fire Ranges at Schweinfurt, Germany; Fort Knox, Kentucky; and Fort Sill, Oklahoma; an instrumented Multipurpose Training Range Complex at Fort Benning, Georgia; and a live fire urban operations Shoot House at Fort Lewis, Washington. All five ranges will provide our soldiers with realistic, state-of-the-art live fire training.

A project to construct troop support facilities, including a physical fitness center and dining facility, and to renovate a headquarters facility and a postal facility at a cost of \$46 million will support the Efficient Basing, East, initiative at Grafenwoehr, Germany.

We are requesting three maintenance facilities for \$41 million to support Army missions.

Our request also includes \$5.5 million for a Vibration Dynamic Test facility at Redstone Arsenal, Alabama. This facility will enable The Army to test small rocket systems and components for reliability to ensure that equipment can withstand the rigors of military operations.

To support deployment of an airborne battalion ready task force, our request includes \$15.5 million for a Joint Deployment Facility in Aviano, Italy. This facility will be constructed on an Air Force Base and will provide support for deployments of the 173rd Airborne Brigade stationed in Vicenza, Italy. In addition, the facility will support other U.S. and NATO forces deploying through Aviano Air Base.

TRANSFORMATION

Our budget contains \$285.3 million for 16 projects at 4 installations that will support the deployment, training, unit operations, and equipment maintenance for Army Transformation. The projects include one barracks, one multi-purpose training range complex, one live fire urban operations Shoot House, upgrades to an existing Military Operations in Urban Terrain (MOUT) facility, two Mission Support Training Facilities (and the acquisition of additional lands in Hawaii to ensure our forces are properly trained), two Alert Holding Areas, expansion of a Deployment Staging Facility, an upgrade to an existing Ammunition Supply Point, a Pallet Processing Facility, an Information Systems Facility, Arms Storage, and an Aircraft Maintenance Hangar. The proposed projects in Hawaii will support the legacy force requirements that are currently not being met and future combat systems.

Following the Persian Gulf War, Congress charged the Department of Defense to determine strategic mobility requirements to support the revised national strategy of greater reliance on CONUS-based contingency forces and power projection capabilities. The Army established the Army Strategic Mobility Program (ASMP) in Fiscal Year 1994 that centered on the capability to deploy a five division contingency force with its associated support structure anywhere in the world within 75 days. We will successfully complete funding the program in Fiscal Year 2003. Over the 10-year period we funded approximately \$800 million in projects to support our strategic mobility.

The Army has reviewed the lessons learned from the successful ASMP and has analyzed current and future strategic environment; multiple, astute, and dynamic adversaries; and identified the need to deploy a brigade combat team anywhere in the world in 96 hours after liftoff, a division on the ground in 120 hours, and five divisions in theater in 30 days. To meet these goals, The Army has developed The Army Power Projection Program (AP3) beginning in Fiscal Year 2004. Five of the Transformation projects listed above support our new deployment requirements for a transformed Army and initiate the start of the AP3 program.

OTHER WORLDWIDE SUPPORT PROGRAMS

The Fiscal Year 2004 MCA budget includes \$100.7 million for planning and design (P&D). The Fiscal Year 2004 P&D request is a function of the construction programs for two Fiscal Years: 2005 and 2006. The requested amount will be used to complete design of Fiscal Year 2005 projects and initiate design of Fiscal Year 2006 projects. Without this level of funding, our ability to design future year projects will be impaired and this will ultimately impact delivery of critically needed facilities to our soldiers.

Host Nation Support (HNS) P&D: The Army, as Executive Agent, provides HNS P&D for oversight of host nation funded design and construction projects.

The U.S. Army Corps of Engineers oversees design and construction to ensure facilities meet The Army's requirements and standards. Lack of oversight may result in an increase in design errors and construction deficiencies that might require United States dollars to rectify. Maintaining the funding level for this mission results in a payback where \$1 of United States funding gains \$44 worth of host nation construction. The Fiscal Year 2004 budget request for \$22 million will provide oversight for over \$950 million of construction in Japan, Korea, and Europe.

The Fiscal Year 2004 budget also contains \$20 million for unspecified minor construction. This funding level will allow us to address unforeseen, critical needs that cannot wait for the normal programming cycle.

ARMY FAMILY HOUSING

According to the Military Family Housing Standards Study done in April 2001, adequate and affordable housing continues to be a major concern to soldiers and their families. We have waiting lists at all of our major posts. Out-of-pocket expenses for soldiers living off post, though less than in prior years due to increases in Basic Allowance for Housing, will be reduced to 3.5% of the total cost of their housing with the approval of The Army Fiscal Year 2004 budget. By Fiscal Year 2005, we will meet our OSD goal to reduce our out-of-pocket expenses to zero. Maintaining and sustaining safe, attractive, and convenient housing for our soldiers and families is one of our continuing challenges. This year's budget expands privatization and increases improvements to existing housing. It supports the Secretary of Defense's goal to provide adequate housing to all military families by 2007.

Our Fiscal Year 2004 request for Army Family Housing is \$1,399,917,000. Table 1 summarizes each of the categories of the Army Family Housing program.

Table 1

ARMY FAMILY HOUSING
Fiscal Year 2004

<u>FACILITY CATEGORY</u>	<u>(\$000)</u>	<u>PERCENT</u>
New Construction	126,600	9%
Post Acquisition Construction	197,803	14%
Planning and Design	32,488	2%
Operations	179,031	13%
Utilities	167,332	12%
Maintenance	432,605	31%
Leasing	234,471	17%
Privatization	29,587	2%
TOTAL	1,399,917	100%

FAMILY HOUSING PRIVATIZATION

The Army continues to implement the Residential Communities Initiative (RCI) to create modern residential communities in the United States, using the military housing privatization authorities granted by the Congress. We are leveraging appropriated funds and government assets by entering into long-term partnerships with private sector real estate development and management firms to obtain financing and management expertise to construct, repair, maintain, and operate family housing communities.

The current program of 28 projects will transition to privatized operations by the end of Fiscal Year 2006. These projects include over 71,000 homes, more than 80% of our family housing inventory in the United States. We already have transitioned 4 installations to privatized operations: Forts Carson, Hood, Lewis and Meade. These projects include over 15,700 housing units. Families have moved into new and renovated housing at those locations and our experience to date has been very positive.

We have selected development partners and are currently negotiating Community Development and Management Plans (50-year construction, operations, and financing plan) at 8 additional locations with over 23,000 units.

Five of these projects (Fort Bragg, Fort Campbell, Presidio of Monterey, Fort Irwin/Moffett Army Airfield/Camp Parks, and Fort Hamilton) will transition to privatized operations in Fiscal Year 2003 and the remaining three (Fort Belvoir, Forts Eustis/Story/Monroe and Fort Stewart) will transition in Fiscal Year 2004. In addition to these projects, four other projects are in various stages of the procurement process (Walter Reed Army Medical Center, Fort Shafter/Schofield Barracks, Fort Polk and Fort Detrick). Twelve more projects are scheduled for the future (Fort Leonard Wood, Fort Sam Houston, Fort Bliss, Fort Drum, Fort Benning, Fort Rucker, Fort Gordon, Fort Knox, Fort Leonard Wood, Picatinny Arsenal, Carlisle Barracks, and Redstone Arsenal).

Our development partners expertise, experience, and resources are resulting in significant improvements in our family housing communities. The Fiscal Year 2004 budget request is necessary to support continued implementation of this quality of life program.

FAMILY HOUSING CONSTRUCTION

The total Fiscal Year 2004 request for construction is \$356.9 million. It continues the Whole Neighborhood Revitalization initiative approved by Congress in Fiscal Year 1992, and supported consistently since that time, and our Residential Communities Initiative program. These projects are based on life-cycle economic analyses and support the Department of Defense's goal funding the elimination of inadequate housing by 2007.

NEW CONSTRUCTION: The Fiscal Year 2004 new construction program provides Whole Neighborhood Revitalization projects at 4 locations, 496 units for \$126.6 million. Replacement construction provides adequate facilities, built to local standards, where there is a continuing requirement for the housing and it is not economical to renovate the current housing. New (deficit elimination) construction provides additional housing to meet requirements. All of these

projects are supported by housing surveys, which show that adequate and affordable units are not available in the local community.

CONSTRUCTION IMPROVEMENTS: The Construction Improvements Program is an integral part of our housing revitalization program. In Fiscal Year 2004, we are requesting \$197.8 million for improvements to 6,883 existing units at 6 locations in the United States and 5 locations in Europe. Included within the scope of these projects are efforts to improve supporting infrastructure and energy conservation.

FAMILY HOUSING OPERATIONS AND MAINTENANCE

The operations, utilities, maintenance, and leasing programs comprise the majority of the Fiscal Year 2004 request. The requested amount of \$1.043 billion for Fiscal Year 2004 is approximately 74% of the total family housing budget. This budget provides for annual operations, municipal-type services, furnishings, maintenance and repair, utilities, leased family housing, demolition of surplus/uneconomical housing and funds supporting management of the Military Housing Privatization Initiative.

FAMILY HOUSING LEASING

The leasing program provides another way of adequately housing our military families. We are requesting \$234.5 million in Fiscal Year 2004 to fund over 14,300 housing units including existing Section 2835 (formerly known as 801 leases) project requirements, temporary domestic leases in the United States, and approximately 7,800 units overseas.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD (MCNG)

Focused on The Army's Vision, the Army National Guard's military construction program for Fiscal Year 2004 is giving special attention to People,

Readiness and Transformation. The Fiscal Year 2004 Army National Guard program supports these elements.

TRANSFORMATION

This year we have concentrated on Army Division Redesign Study (ADRS) projects. ADRS addresses a long-standing Army problem of lack of Combat Support and Combat Service Support Force. The Army National Guard, in support of the National Military Strategy and wartime requirement shortfalls, is reorganizing selected units toward this end, i.e., Chemical, Medical, and Military Police units.

We are requesting \$84.9 million for 31 ADRS projects. These funds will support the construction of Readiness Centers, Organizational Maintenance Shops, Training Fire Stations, an Armed Forces Reserve Center, and a Working Animal Building.

The ADRS transformation, which began in Fiscal Year 2001, is scheduled to be completed by Fiscal Year 2009.

READINESS CENTERS/ARMED FORCES RESERVE CENTER: To accommodate the force structure change, the Army National Guard will make additions or alterations to 14 readiness centers in Alabama, Indiana, Kansas, Kentucky, Nebraska, New Mexico, New York and North Dakota. Six new Readiness Centers are planned for California, Kentucky, Michigan, Missouri, Nebraska and North Carolina.

We will also construct an Armed Forces Reserve Center in Mobile, Alabama. This facility will house all elements of a Support Group, Chemical Company, Medical Battalion, and Special Forces Detachment, as well as the

Marine Reserves Reconnaissance Company, Intelligence Company, and the Marine Corps Inspector and Instructor staff.

TRAINING FIRE STATIONS: Six training fire stations are scheduled for Alabama, Connecticut, Kentucky, North Carolina (2), and Nebraska. These training fire stations will provide the necessary administrative, training, maintenance and storage areas required for the units to achieve proficiency in their required training tasks.

ORGANIZATIONAL MAINTENANCE SHOPS: The Army National Guard has three Organizational Maintenance Shops requested in Fiscal Year 2004. These facilities require additional space and upgrades to support the ADRS initiative. They are located in Montana (two) and New York.

WORKING ANIMAL BUILDING: As a result of ADRS, there will be two Military Police Working Dog Teams assigned to the Connecticut Army National Guard. These facilities will provide for all phases of dog training for patrol and protection.

MISSION

In Fiscal Year 2004, the Army National Guard has requested \$55.3 million for the revitalization of four mission projects. They include a Readiness Center, a Consolidated Maintenance Facility (Phase I), an Army Aviation Support Facility and a Military Education Facility (Phase III)

READINESS: A new Readiness Center at Lenoir, North Carolina, will replace the current 48-year old facility that was built in a flood plain. The State will provide 41 acres of State land to relocate the new Readiness Center. This project has been selected as the Army National Guard Fiscal Year 2004 candidate for the demonstration program for the reduction of long-term facility maintenance cost.

MAINTENANCE: The Consolidated Maintenance Facility at Pineville, Louisiana, will consist of a Combined Support Maintenance Facility, a Maneuver and Training Equipment Site, and two Organizational Maintenance Shops. These facilities will provide direct support, general support, and limited depot maintenance for all vehicles and equipment in Louisiana and full-time organizational maintenance support to selected units. This facility will permit Army National Guard personnel to work in a safe and efficient environment.

An Army Aviation Support Facility in South Burlington, Vermont, will replace the current facility that was built in 1954. The new facility will provide the additional 80,650 square feet required to support three aviation units with 18 aircraft.

TRAINING: The Military Education Facility (Phase III) at Camp Shelby, Mississippi, is the last and final phase of this Regional School Project. This Regional Training Center, a Category A Training Site, supports units from Mississippi, Alabama, Arkansas, Kentucky, Louisiana, Oklahoma, Tennessee, and Texas. The school conducts leadership training, maintenance training, and armor crewman training.

WORLDWIDE UNSPECIFIED FUNDING

The Army National Guard's Fiscal Year 2004 budget request contains \$26.6 million for planning and design of future projects and \$1.5 million in unspecified minor construction to address unplanned health or safety issues that may arise during Fiscal Year 2004.

MILITARY CONSTRUCTION, ARMY RESERVE (MCAR)

This year's MCAR program focuses on the Army Reserve's highest priority—Readiness. Army Reserve Centers are the key component to the readiness of units and provide support to soldiers and their families. In Fiscal Year 2004, the Army Reserve has requested \$57.9 million to construct three Army Reserve Centers and a Maintenance and Storage facility.

MISSION FACILITIES

ARMY RESERVE CENTERS: Three Army Reserve Centers will be built in Fort Meade, Maryland; Cleveland, Ohio; and Nashville, Tennessee. The Fort Meade Army Reserve Center will replace 50 World War II wood buildings, which will be returned to the installation for demolition. This project has been selected as the Army Reserve Fiscal Year 2004 candidate for the demonstration program for the reduction of long-term facility maintenance cost. The Cleveland Army Reserve Center will replace two 1950s era facilities and three leased facilities. The Nashville Army Reserve Center will replace a high-cost leased facility.

MAINTENANCE: An Organizational Maintenance Shop/Direct Support Maintenance Shop and Storage facility will be built on Fort Gillem, Georgia.

PLANNING AND DESIGN/UNSPECIFIED MINOR CONSTRUCTION

The Fiscal Year 2004 MCAR budget includes \$7.712 million for planning and design (P&D), which provides essential planning and design capability in order to properly execute the MCAR program. The Fiscal Year 2004 budget also contains \$2.886 million for unspecified minor construction to satisfy critical and emergent mission requirements.

SUSTAINMENT, RESTORATION AND MODERNIZATION (SRM)

In addition to MCA and AFH, the third area in the facilities arena is the O&M portion of the Sustainment, Restoration and Modernization (SRM) program. Sustainment is the primary account in installation base support funding responsible to maintain the infrastructure to achieve a successful readiness posture for The Army's fighting force. Installation facilities are the power projection platforms of America's Army and must be properly maintained to be ready to support current Army missions and any future deployments.

O&M SRM consists of two major functional areas: (1) facilities sustainment of real property and (2) restoration and modernization. Facilities sustainment provides resources for maintenance costs and contracts necessary to keep an inventory of facilities in good working order. It also includes major repairs or replacement of facility components, usually accomplished by contract, that are expected to occur periodically throughout the life cycle of facilities. Restoration includes repair and restoration of facilities damaged by inadequate sustainment, excessive age, natural disaster, fire, accident or other causes. Modernization includes alteration or modernization of facilities solely to implement new or higher standards, including regulatory changes, to accommodate new functions, or to replace building components that typically last more than 50 years, such as foundations and structural members. The Active Army's OMA Sustainment funding request in Fiscal Year 2004 is \$1.8 billion. The Army National Guard is requesting \$380 million and the Army Reserve is requesting \$182 million.

In Fiscal Year 2004, The Army's top O&M priority in SRM is to sustain its facilities. This prevents further deterioration of the facilities we own and allows the facilities to support The Army's mission. The basic maintenance and repair of all Army facilities is funded at 93% of the O&M requirement. At the current funding levels, facilities will be properly maintained and deterioration will be minimal. Restoration and modernization initiatives supplement MILCON funding

and meet recapitalization requirements. The Army has used the O&M R&M for barracks, strategic mobility, and other needs. The Army's demolition program will eliminate unneeded facilities. In Fiscal Year 2004, we plan to eliminate approximately 2.7 million square feet of facilities worldwide.

The Army's privatization or outsourcing of utilities is the first part of our Long Range Utilities Strategy within the SRM program to provide reliable and efficient utility services at our installations. All Army-owned electrical, natural gas, water, and waste water systems are being evaluated to determine the feasibility of privatization. When privatization appears economical, we use competitive contracting procedures as much as possible. The Army is on track and continues to seek ways to privatize as many systems as possible by September 30, 2003. OMA restoration and modernization resources will be programmed for systems we are not able to privatize so that all systems are brought to a C2 (quality) status by 2010. To date, 18% (64 of 351 systems) of all CONUS systems and 23% (250 of 1,068) of systems worldwide have been privatized. During Fiscal Year 2003, the negotiation and evaluation process for an additional 103 CONUS systems will be completed. Recent successes include privatization of the natural gas system at Fort Campbell, Presidio of Monterey and Fort Benning; electrical systems at Fort AP Hill, Picatinny Arsenal, Presidio of Monterey, Red River Army Depot, and Fort Bliss; and water and waste water systems at Red River Army Depot and Presidio of Monterey.

BASE REALIGNMENT AND CLOSURE (BRAC)

Our facilities strategy strives to meet the needs of today's soldiers while also focusing on the changes required to support The Army of the 21st Century. Our budget includes the Army's requirement to continue unexploded ordnance (UXO) removal, environmental restoration, and property management of those facilities not yet disposed from the first four rounds of BRAC. In Fiscal Year 2001, The Army began saving \$924 million annually upon completion of the first four rounds of BRAC. Although these savings are substantial, we need to achieve

even more, and bring our infrastructure assets in line with projected needs. The Army supports the need to close and realign additional facilities and we appreciate the Congress' authority to have an additional round in Fiscal Year 2005.

The Army is now in the second year of exclusively caretaking and completing the remaining environmental restoration activities at BRAC installations. This budget will continue this important work. These funds allow us to properly caretake these properties and to continue environmental and ordnance removal efforts that will facilitate economic revitalization and will render these properties safe. This budget includes the resources required to support projected reuse in the near term and to continue with current projects to protect human health and the environment. The Army implemented innovative approaches to environmental restoration at BRAC sites in Fiscal Year 2002, which supported the early transfer of several properties. The Army will continue to support early property transfers in Fiscal Year 2003 and beyond.

Although the extensive overseas closures do not receive the same level of public attention as those in the United States, they represent the fundamental shift from a forward-deployed force to one relying upon overseas presence and power projection. Without the need for a Commission, we are continuing to reduce the number of installations overseas. The total number of Army overseas sites announced for closure or partial closure since January 1990 is 685. Additional announcements and efficient basing initiatives will occur until the base structure matches the force identified to meet U.S. commitments.

The significant challenges posed by the removal of unexploded ordnance, the remediation of groundwater, and the interface of a variety of regulatory authorities continue to hinder the disposal of property. A number of innovative approaches for environmental restoration were recently developed in an effort by The Army to expedite the transfer of property, while ensuring the protection of human health and the environment. Two innovative mechanisms are being

utilized to complete environmental restoration efforts: Guaranteed/Fixed Price Remediation (G/FPR) Contracts and Environmental Services Cooperative Agreements (ESCA). A G/FPR Contract obligates BRAC funds necessary for regulatory closure of specified restoration activities. The Army retains responsibility for completion of the environmental restoration, overseeing the contractor and ensuring that regulatory closure of the property is obtained. An ESCA is a different mechanism, authorized under the environmental restoration program that obligates Army BRAC funds and apportions some amount of liability to a governmental entity representing the reuse interests of the particular BRAC installation, in exchange for specific environmental restoration services outlined in the ESCA.

The Army used a G/FPR to accelerate regulatory closure from 2003 to 2002 at Fort Pickett, Virginia, at a cost that will not escalate over the course of the work. We estimate that this \$2.9 million contract saved us \$0.8 million based on our initial estimates. An ESCA allows The Army to transfer property and associated cleanup responsibilities to a local reuse authority or developer. This allows the developer to integrate cleanup with their redevelopment plans. An ESCA completed in 2001 was used in conjunction with early transfer authority at Military Ocean Terminal, Bayonne, New Jersey, saving The Army an estimated \$5 million. An ESCA will facilitate the early transfer in Fiscal Year 2003 of property at Oakland Army Base, California. The benefits of the G/FPR and ESCA initiatives are that they limit Army environmental remediation cost growth liability and facilitate property disposal.

We remain committed to promoting economic redevelopment at our BRAC installations. We are supporting early reuse of properties through economic development conveyances, as well as the early transfer of properties along with cooperative agreements to accelerate the completion of remaining environmental remediation. The Army is also making use of leasing options approved by Congress and awarding guaranteed fixed price remediation contracts to complete

environmental cleanup and make properties available earlier. Real property assets are being conveyed to local communities, permitting them to quickly enter into business arrangements with the private sector. Local communities, with The Army's support and encouragement, are working to develop business opportunities that result in jobs and tax revenues. The successful conversion of former Army installations to productive use in the private sector benefits The Army and ultimately the local community.

SUMMARY

Mr. Chairman, our Fiscal Year 2004 budget is a balanced program that permits us to execute our essential construction programs; provides for the military construction required to improve our readiness posture; provides for family housing leasing, operations and maintenance of the non-privatized inventory; and initiates privatization at four additional installations. This request is part of the total Army budget request that is strategically balanced to support the current war effort, the readiness of the force and the well-being of our personnel.

Over the past few years with your support, we have successfully improved our infrastructure posture and postured ourselves for further improvements as The Army moves to the Objective force and The Army of the future. We implemented a revolutionary management system with the establishment of the Installation Management Agency. We have reduced our infrastructure by a third. In addition, we have initiated efforts to privatize family housing and utilities systems where it makes economic sense and supports our military mission. We have the resources to improve the living conditions of 106,000 single soldiers and will be 79% complete with approval of this budget. We have expedited the process to turn over closed facilities and save the taxpayers money.

Our long-term strategy can only be accomplished through sustained, balanced funding, divestiture of excess capacity, and improvements in management and technology. With your support, we will continue to streamline, consolidate, and establish community partnerships that generate effective relationships and resources for infrastructure improvement, continuance of services, and improved quality of life for soldiers, their families, and the local communities of which we are a part.

The Fiscal Year 2004 request for the Active Army is for authorization of appropriations and appropriations of \$2,935,927,000 for Military Construction, Army, and Army Family Housing.

The request for authorization of appropriations and appropriations is \$168,298,000 for Military Construction, Army National Guard, and \$68,478,000 for the Military Construction, Army Reserve.

Mr. Chairman, this concludes my statement. Thank you.

**QUESTIONS AND ANSWERS SUBMITTED FOR THE
RECORD**

MARCH 18, 2003

QUESTIONS SUBMITTED BY MR. ORTIZ

Mr. ORTIZ. The Army has aggressively been using the authority Congress has provided to pursue privatized housing in its Residential Communities Initiative (RCI). I commend the Army for moving aggressively to better the housing for our uniformed personnel and their families.

I know some members are still unsure how we can leverage relatively small amounts of dollars into large numbers of housing compared to traditional family housing construction. Briefly explain how RCI works, and specifically address the following points:

Does this save the Army and the U.S. taxpayer money over the course of the 50 year contract, or are we paying less now only to pay more later?

Secretary FLORI and General LUST. In regards to leverage, the RCI capital improvements (renovations, reconstruction, new construction, etc.) are funded in a manner similar to the way an individual finances the purchase of a home. Like, the individual homeowner, the housing privatization project may borrow money based on the current and future (50-year) revenue stream created by the soldiers' housing allowances. This revenue stream, plus any direct government investment if required, determines the level of capital improvements for the life of the project.

A related issue is whether RCI saves the Army and the U.S. taxpayer money. The Army prepares a 50-year life cycle cost analysis for all RCI projects. These analyses include the overall privatization project costs (capital costs and operational costs) as compared to a MILCON project of similar scope. Utilizing the Military Housing Privatization Initiative authorities, the life cycle cost comparison of the Army's first 5 RCI projects (Forts Hood, Lewis, Meade, Bragg and Presidio of Monterey) shows a savings of 20.8% over the course of the 50-year project. One important advantage associated with RCI is the Army's ability to tap into private sector financing methods, as well as property development and management expertise and efficiency. These efficiencies translate into lower life cycle costs and provide for sustainable funding for the life of the project.

Mr. ORTIZ. The private entity will typically borrow money to build or renovate the housing. This costs them money. They make money back on themaintenance portion of the 50-year contract. How does the Army make sure theywill not do maintenance "on the cheap"?

Secretary FLORI and General LUST. The Army uses a combination of factors to align the developer partner's interests with the Army's desired outcomes. Under the RCI program, a partnership is formed for each project and the installation and the development partner are member of a major decisions committee that oversee the project. As a result, the Army has a say in all major decisions and has the authority to dismiss service entities that are performing poorly. RCI projects include tight business agreements with performance-based incentive fees, independent monitors of quality control in construction and services, and independent financial oversight of how all funds are expended. The Army also maintains a portfolio and asset management process to continuously evaluate the status, quality, and performance of the project. Since the partner will be responsible for the residential communities for the 50-year term of the project, it is in their best interest to build quality, sustainable facilities. If housing is not adequately maintained, military families can choose not to live in the privatized housing and if necessary, the Army can terminate the partner for cause (the land does not convey).

Mr. ORTIZ. Our military personnel will pay the rent at these privatized housing units with their basic allowance for housing (BAH). What happens if the BAH does not keep pace with inflation over the 50-year life of these projects? Does the private entity have any rights to a certain level of BAH, or if BAH does not go up enough over the next 50 years, might these private entities go bankrupt?

Secretary FLORI and General LUST. The project is not guaranteed an occupancy level or a specific rent amount. Rents remain equal to BAH provided to the soldier as his pay entitlement for housing. The methodology for calculating and approving BAH should ensure that BAH reflects the cost-of housing and utilities in the local economy, and thereby ensure the viability of the Limited Liability Company (LLC). The flexibility of the LLC as a business entity will permit the Managing Member

and the Army as the Limited Partner to adjust the project's business plans to account for some variances to the financial projections. Inadequate BAH will adversely affect the quality of on-post and off-post housing for our soldiers.

Mr. ORTIZ. The Army—like the other services—is aggressively entering into private public partnerships for purposes of housing military personnel. These Residential Communities Initiatives are proving very successful and very cost efficient in providing affordable houses for officers and enlisted personnel.

But one question is this: What arrangements have been made to ensure that in the case of a base realignment and closure (BRAC) action, this housing remains affordable and available to the community? Currently, the privatization initiatives guarantee a long term (usually 50 years) lease of the land by the Army to the developer. It is the length of the contract that assures the developer a return on its investment, despite the low rental rates at these units.

But under a BRAC, the land is destined to be conveyed to new (usually municipal) owners. How do we prevent developers from simply lifting the cap on prices on those units and selling them for top dollar? How do we guarantee that the homes remain available to the community at affordable prices while at the same time making good on commitments to the developer?

Secretary FLORI and General LUST. The Army has considered the potential of base closures in developing RCI projects. RCI projects are built to local standards so the units can be easily assimilated into the local market/transformed into private residential communities and rented at fair market value. In most cases, if BRAC occurs and the Army's partner purchases the land, the Army will not be involved in reuse decisions.

QUESTIONS SUBMITTED BY MR. TAYLOR

Mr. TAYLOR. For the record, I would very much like the Navy's estimate of what it is going to cost to build the new East Coast base; and I am talking about everything from the family housing, barracks, runways, everything associated with a base that in fact, building a base from scratch to make up for the one that was given away.

Secretary DUBOIS. The closest example that evaluates new mission infrastructure requirements is an ongoing evaluation to homebase the new F/A-18 E/F Super Hornet aircraft on the East Coast. The Navy does not have an estimate of what it would cost to build a new East Coast base because one is not needed. The Department of the Navy's F/A-18 E/F analysis substantially relies on using existing capacity at existing military installations. Based on the analysis of the East Coast base structure, it has been determined that existing East Coast capacity is available to support the 144 Super Hornet aircraft. Eight possible Super Hornet homebasing alternatives involving three existing installations are currently under consideration in a required environmental impact statement for the action. There is a wide range of additional facility investment required that depends upon the level of existing operational and support facility capacity already available under each basing scenario. Depending on the alternative selected, the investment expected at the existing installation ranges from \$3M to \$570M. The Navy's two preferred alternatives, that base a varying number of aircraft at NAS Oceana and MCAS Cherry Point, include an infrastructure investment of \$20M or \$160M respectively. Finally, the Navy has also included a preference to support an additional investment of \$190M for a new Outlying Landing Field that would support Super Hornet operations, enhance the operational readiness of the Atlantic Fleet and bolster the Navy's objective to surge strike group assets forward in future contingency operations.

QUESTIONS SUBMITTED BY MR. RYUN

Mr. RYUN. I believe most members of this subcommittee, including myself, are very concerned about the upcoming BRAC. Although I strongly support the military's efforts to transform and realign to better prepare for the new and changing threats and challenges facing the United States, now may not be the best time to start closing bases.

My concerns include:

1. The uncertain future of our troops stationed in Europe and Korea;
2. The uncertainties of what the best strategy and force structure is to fight and win the Global War on Terrorism;
3. The increasing and evolving role of our Reserve component in military actions around the world;

4. The questions of whether we have enough active duty troops to accommodate current and future military requirements;
5. With the creation and organization of the Department of Homeland Security (DHS) still in its infant stage, for it is unclear what new roles or challenges will be confronting DoD due to the DHS; and
6. The current economic and budgetary outlook for most states and local governments is very bleak and may not be able to absorb a new round of base closures at this time.

How will the Department of Defense be approaching the fiscal year 2005 BRAC in order to effectively deal with these real concerns?

Secretary DuBois. The BRAC 2005 process now underway will be a comprehensive analysis of all military installations within the U.S. and its territories with the primary goal being to rationalize our military infrastructure to meet the realities of the 21st century. Achieving this goal will allow the Department to eliminate unneeded infrastructure and devote resources to warfighting requirements. The Department will do everything possible to ensure the BRAC process is as fair and objective as possible, within a very disciplined analytical framework. All military installations will be reviewed and all recommendations will be based on approved, published selection criteria and a force structure plan.

As required by Public Law 107-107, military value is the primary consideration in analyzing and making closure or realignment recommendations. The statute also stipulates what factors should be included in military value and other factors that the selection criteria should address, as a minimum. These factors are directly related to the concerns you addressed in your question, such as force structure considerations including reserve components, impact on homeland defense, and economic impact on communities, to name a few.

Regarding the uncertainties associated with overseas basing, the Secretary directed the development of a comprehensive and integrated presence and basing strategy looking out 10 years. Results of that effort should be available later this year and will inform the BRAC 2005 process.

The Department will ensure that all selection criteria requirements and considerations are appropriately incorporated into the draft BRAC 2005 selection criteria, which will be published in the Federal Register for public comment and transmitted to the Congressional defense committees no later than December 31, 2003. No later than February 16, 2004, the Secretary of Defense will publish in the Federal Register and transmit to the Congressional defense committees the final selection criteria that will be used in making recommendations for closure or realignment of military installations.

Mr. RYUN. I am very concerned that the military construction budget is being short-changed. With the Army requesting 10% less for military construction over fiscal year 2003 and with the National Guard and Reserve military construction budgets being slashed 30% and 33% respectively, it is hard to believe that this budget includes adequate military construction funding.

How do you account for such steep decreases in military construction funding requests?

Secretary FLORI and General LUST. The Army is meeting its highest priorities of People, Readiness and Transformation. The budget request supports the overarching Army priorities by continuing significant investment in improving barracks and Army Transformation-asking for more would have meant unacceptable risk elsewhere. As a point of comparison, our fiscal year 2004 budget request is, in fact, higher than the fiscal year 2003 budget request for military construction for the Active Army, National Guard and Army Reserve.

Mr. RYUN. One positive note in the Army's budget is the Residential Communities Initiative. From my perspective, RCI is a tremendous program that has been successfully implemented on several Army installations. In fact, I have heard that it will be coming to Fort Leavenworth.

Can you please explain how this housing initiative is a winning solution for the Army, and more importantly, for Army families?

Secretary FLORI and General LUST. The RCI program is dedicated to building quality, sustainable residential communities for soldiers and their families. The RCI program focuses on total residential communities (not just houses) that provide safe, modern, convenient, affordable and attractive homes for our soldiers and their families where adequate off-post housing is not available.

The Army's RCI program includes 27 projects, 72,000 houses, 80% of Army Family Housing in the U.S. The program is showing positive results. At the first 15 projects the Army expects to leverage \$291M of Army investment into \$4.8B initial private development. The RCI program is built on partnerships with nationally recognized

private sector developers who can leverage private sector capital and bring best practices/innovations to our privatization projects for the 50-year term of the project.

The Army is negotiating flexible long-term partnership agreements with the private sector partners, and maximizing opportunities for interchange between developers, soldiers and their families, the local community, and the Army. These agreements foster innovation and creativity in crafting the best business practices and development plans.

The Army is applying lessons learned and industry practices to construction, replacement, maintenance and operations of family housing to ensure quality residential communities. The Army's RCI program offers a way for the Army to leverage funds and assets and provide quality housing and communities for our soldiers and their families that are sustainable over time.

Please visit our website, www.rci.army.mil for up to date information on the Army's RCI program.

QUESTIONS SUBMITTED BY MR. HAYES

Mr. HAYES. One of the initiatives your office has directed the Services to do is privatize housing. As you know, the Army is leading the pack on this initiative and at Ft Bragg in my district; they are getting ready to break ground once the Community Development Master (Management) Plan is approved by Congress. While this initiative will be good for soldiers and their families, I am gravely concerned about one particular aspect and that is the schools. With hundreds-up to roughly 842-poised to move on post, there needs to be infrastructure available to meet their needs. As you know, Ft Bragg is home to a Department of Defense school system, the first installation that has undergone privatized housing to be faced with this problem. How does your office intend to address this problem and find the funding source necessary for new schools?

Secretary DUBOIS. To satisfy its housing requirement and revitalize its inadequate housing at Fort Bragg, the Army will privatize 5,578 housing units. As part of this effort, the Army plans to add 834 units to its existing inventory of 4,744 units. According to a recent Domestic Dependent Elementary and Secondary Schools (DDESS) study, this will drive a requirement for two additional schools (two new elementary schools; an addition to the middle and junior high schools).

The Department intends to extend the privilege of attending a DoD school to each schooled child on Fort Bragg. The Army intends to transfer military construction funds to the Department of Defense Education Agency (DODEA) for the additional school construction. DoDEA will fund the cost of the operation and maintenance of the new DDESS schools.

Mr. HAYES. What is the Department of the Army doing to resolve the RCI school issue and what kind of response have you received from the Office of the Secretary of Defense?

Secretary FIORI. At all RCI sites, The Army engages in early and continuous discussions/coordination with local school officials to determine housing privatization impacts (if any) on school districts, and to find solutions to added/shifting student loads. Five RCI locations, Forts Bragg, Campbell, Stewart, Benning and Rucker, operate Department of Defense Education Activity (DODEA) schools. Local public school districts serve other Rd locations; sometimes more than one school district serves a given installation. The Army works with local school superintendents so they are aware of the RCI plan, scope, and timetable. The Army works with DODEA or the local school districts to assess potential impacts. Additionally, school representatives are included in planning sessions between the Army and the developer partner. Although the tax base off post may be minimally affected, increased numbers of families on post increase School Impact Aid to local school districts. The Army may provide land for school construction if needed, and is also looking at other options, such as using MILCON funds to defray school construction costs. The Army continues to work with OSD and local school officials to resolve school requirement issues.

Mr. HAYES. I am concerned about the forecast for 10,000 new A-76 initiatives as part of the Army's Third Wave initiative that may be announced. Given that there are over 50 Army installations stateside, this averages out to over 200 A-76 studies per installation. How do you expect the installations to effectively execute these studies, given all the other activities happening? For example, at Ft. Bragg, they are currently and continuously deploying the 18th Airborne Corps and US Special Forces, preparing over 5,000 National Guardsmen and Reservists to deploy, proceeding with RCI, and working to protect the environment through their partnership with The Nature Conservancy, just to name a few of the installation's tasks. I'd also

like to highlight that four of the last five A-76 studies the post has undergone have remained in house. Given the conflicting views about the savings that A-76 studies really generate and their tumultuous effects on the civilian workforce, is this really a good time to be executing such an aggressive plan?

Secretary FIORI. The Army has not yet completed its analysis as to how many studies and the number of positions that will be included in each study.

Mr. HAYES. We can't know how much we will save until we know how much the initiative costs. How much do you think First Wave will cost the Army? The General Accounting Office acknowledges that the savings A-76 produces are debatable. Given this uncertainty, how can you be sure that Third Wave will produce any savings?

Secretary FIORI. The costs of implementing competitive sourcing and the estimated savings have not yet been determined.

Mr. HAYES. Will installations be subject to double jeopardy if they have already gone through A-76 studies for a particular function?

Secretary FIORI. Installation and activity functions previously studied will normally be subject to possible study every five years. Subsequent to the hearing, the new OMB Circular A-76, Performance of Commercial Activities, dated 29 May 2003, Attachment B, paragraph E.5.b. was released and requires an agency to conduct a follow-on competition of the activity by the end of the last performance period (performance periods are normally 5 years) unless the Competitive Sourcing Official (CSO) in the Office of the Secretary of Defense grants a specific exemption before the end of the last performance period. The CSO may extend the performance period for a high performing organization if the CSO determines that continued cost savings justifies the extension and documents these cost savings. The extension is no more than three years after the last performance period and requires a formal announcement of the extension.

QUESTIONS SUBMITTED BY DR. SNYDER

Dr. SNYDER. In fiscal year 2002, the Congress appropriated \$1.5 million for design activities for an upgrade to the white phosphorus line at the Pine Bluff Arsenal. Last year I believe we appropriated \$6.5 million for other purposes related to this function. Given the danger posed by this antiquated line and that no other facility currently produces white phosphorus munitions, when does the Army plan to request funds for this project? Given the age of the line and potential safety hazards, what accounts for the delay?

Secretary FIORI. The Department has funded the "White Phosphorous. Facility Upgrade" project in the FY 2004/05 Capital Investment Program of the Ordnance Army Working Capital Fund Biennial Budget. The project funding is \$24.3 million in FY 2004 and \$7.5 million in FY 2005. Capital assets for a working capital fund installation, such as Pine Bluff Arsenal, are financed through the Capital Investment Program. Therefore, the white phosphorous project was submitted in the FY 2004/05 President's Biennial Budget in this manner.

QUESTIONS SUBMITTED BY MR. FORBES

Mr. FORBES. Do you have a definition of what an obsolete facility is?

Secretary DUBOIS. The Department uses the standard definition for obsolete facilities, as accepted by the private sector and other governmental agencies. Functional obsolescence is defined as property that is unable to be used to adequately perform the function for which it was intended, due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies in design, or other similar factors that affect the property itself or the property's relationship with other surrounding property.

QUESTIONS SUBMITTED BY MRS. DAVIS

Mrs. DAVIS. I understand the Department is conducting a review of overseas bases. How aggressively is the Department looking at closing or realigning those bases, and when will decisions be made? Are there legal restrictions to closing those overseas bases? How does the Department compare the utility of U.S. bases to overseas bases for BRAC purposes? Do we have excess infrastructure overseas?

Secretary DUBOIS. On March 20, 2003, the Secretary directed the development of a comprehensive and integrated presence and basing strategy looking out 10 years. Results of that effort, including rationalizing areas of potential excesses and identi-

fyng the utility of overseas installations, should be available later this year and will inform the BRAC 2005 process. The Department is not aware of any legal restrictions to closing overseas bases, although there may be issues associated with Status of Forces Agreements and other bilateral agreements with the various host nations that will need to be considered and resolved.

QUESTIONS SUBMITTED BY MR. ROGERS

Mr. ROGERS. In terms of depot infrastructure, is there an excess, in your opinion, of infrastructure given the level of readiness that we are currently in?

General LUST. The Army has initiated an analysis of its installations in preparation for BRAC 2005. Since the Army's effort is being integrated with similar efforts by the Navy, Marines and Air Force, the question of depot capacity in any single service cannot be answered until the joint analyses are completed. Even while the analyses are underway, the Army is continuing efforts to improve processes throughout its depot structure, and it is expected that these process improvements will have an impact on infrastructure capacity.

Mr. ROGERS. How do you see the depot infrastructure that we have now meeting your future goals as far as the transformation of the military?

General LUST. The current infrastructure, though adequate for the next few years, will have to be modernized if depots' are to remain viable industrial facilities and Centers of Industrial Technical Excellence. The average age of the depot buildings is 48 years and though the equipment in the depots is considerably younger, the Army will have to continue to invest in depots' infrastructure. The Army is developing a Capital Investment Program (CIP) Plan to address the infrastructure requirements of the depots for the future, based on sound business case analyses. The Capital Investment Program will address the infrastructure requirements for the next twenty years and support the Army's transformation by permitting depots to employ new technology to support weapon systems of the future and improve the manufacturing process in both capability and productivity.

FISCAL YEAR 2004 NATIONAL DEFENSE AUTHORIZATION ACT—MILITARY CONSTRUCTION BUDGET REQUEST FOR PROGRAMS OF THE ACTIVE AND RESERVE COMPONENTS OF THE DEPARTMENT OF THE NAVY AND THE DEPARTMENT OF THE AIR FORCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
READINESS SUBCOMMITTEE,
Washington, DC, Thursday, March 20, 2003.

The subcommittee met, pursuant to call, at 3:00 p.m., in room 2118, Rayburn House Office Building, Hon. Joel Hefley (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. JOEL HEFLEY, A REPRESENTATIVE FROM COLORADO, CHAIRMAN, READINESS SUBCOMMITTEE

Mr. HEFLEY. The subcommittee will come to order. Today the Readiness Subcommittee meets to hear testimony from the Department of the Navy and the Department of the Air Force regarding the fiscal year 2004 budget request for military construction (MILCON) and family housing. I want to welcome our witnesses. We certainly look forward to your testimony.

Two years ago, Department of Defense (DOD) officials testified before this subcommittee that the Department of Defense was undertaking an aggressive program to renew the Department's infrastructure. Perhaps the witnesses believed that statement at the time. Sadly, the truth is that it has not unfolded in this manner at all.

And, of course, we know there have been some intervening circumstances that could affect this. This year the subcommittee has received a military construction and family housing budget request that continues the under-funding of real property maintenance and new construction, a hallmark of the Department's stewardship of these programs for many years. While I have no doubt that today's witnesses would like to testify that all military construction and family housing requirements are met with this budget, in reality, those requirements will again be unmet this year. While I am aware that a variety of national security priorities must be balanced, the trend is disappointing and once again requires congressional attention. I would point out that this year's DOD military construction and family housing budget request is 14 percent smaller than last year's authorized level of nearly \$10.5 billion.

Once again, the Department is requesting merely \$9 billion for these important programs. This lack of adequate funding would result in no significant improvement in DOD's recapitalization rate

over the last year, and in some of the services, the rate deteriorates even further.

Clearly, the Department is holding military construction investment in abeyance pending the next round of base realignment and closure (BRAC) in 2005. Across the DOD, the military construction funding projection charts show that only in the 2006 to 2009 time period, after the next BRAC round, do real increases in infrastructure investment begin. I think that the budget projections in those years underestimate the likely costs we will face in meeting requirements for new construction, modernization and environmental remediation associated with any BRAC related activities.

I do want to applaud the improvements in the adequacy of bachelor and family housing that resulted from the services' prudent investment and privatization efforts. Having personally visited with service men and women around the country, I know that these quality of life improvements are definitely benefiting morale.

However, by the Department's own admission, as much as 68 percent of the services' facilities are rated C-3 and some, C-4, which is an appalling state of readiness that detrimentally affects morale, efficiency and the prudent management of critical infrastructure. The delay in investment in these infrastructures simply makes the problem more expensive in the out-years.

I am committed to very close scrutiny of the military construction and family housing budget request that has been submitted by the Department of Defense. Our brave service men and women deserve safe, habitable, efficient, well sustained facilities in which to live and work. And we owe it to them to be diligent and prudent in this endeavor.

I do not doubt the good intentions of those who appear before us to testify today. I do, however, want to impress upon you that I expect you to work with us in improving upon the budget request we have received.

At this time, I would like to recognize my good friend from Texas, the ranking member, Solomon Ortiz. Solomon?

STATEMENT OF HON. SOLOMON P. ORTIZ, A REPRESENTATIVE FROM TEXAS, RANKING MEMBER, READINESS SUBCOMMITTEE

Mr. ORTIZ. Thank you, Mr. Chairman. I join you in welcoming all of our distinguished witnesses.

Mr. Secretary Johnson, good to see you.

Secretary JOHNSON. Yes, sir.

Mr. ORTIZ. Of course, we will hear from the Navy and the Air Force today for this Readiness Subcommittee hearing on the fiscal year 2004 budget request for military construction and family housing. With all that is going on regarding Iraq, I appreciate our witnesses taking the time to be with us this afternoon. And again, welcome.

Mr. Chairman, as you have said, and as I told the Office of the Secretary of Defense (OSD) and Army witnesses we had before us two days ago, I believe the President's budget request for military construction and family housing is inadequate. Last year for the fiscal year we are now in, 2003, the Department requested just under \$9 billion. Congress on a bipartisan basis considered the re-

quest inadequate and provided about \$10.5 billion for military construction and family housing. This year the President's request is again \$9 billion. That represents a cut of about \$1.5 billion or more than 20 percent.

It is true that last year we provided about \$700 million for one time only force protection projects in direct response to the September 11th terrorist attacks. But even if these funds are excluded from the comparison, the President's budget represents a cut of almost 8 percent from the 2003 level. We should be increasing, not cutting funding for military construction and family housing.

The Navy and Marine Corps MILCON request this year is a little less than \$1.2 billion, which is 15 percent below last year's level. Family housing construction funding for the Navy and Marine Corps is \$184 million, a 51 percent reduction from last year. Even considering the fact that the Navy is pursuing increased privatized housing options, this does not mask the fact that this is a large, large cut. Likewise, the Air Force military construction request is \$887 million, 34 percent below last year's level.

There is one item of good news today. Family housing construction funding is \$696 million, which is 3 percent less than last year's level. In my opinion, it is a direction all of the military construction and family housing accounts should be headed. The need for military construction and family housing is obvious at virtually every base in this country.

About two-thirds of our military facilities are either rated C-3, like the chairman just stated, which means they have serious deficiencies or C-4, which means that they do not support mission requirements. We cannot solve this problem simply by providing more sustainment funding. Sustainment funding is critical to supporting our defense infrastructure. But it cannot be allowed to become a substitute to replacing obsolete facilities.

I know that our witnesses are not to blame for this problem. They care about our infrastructure and the quality of housing for our military personnel and their families. They do the best they can with the dollars that they are given. But, I do not think the Department as a whole should keep underfunding these very important accounts until after the 2005 BRAC round. It is not good for readiness, and it is not fair to our men and women in uniform and their families.

The Department's long-term budget plan, the future year defense plan (FYDP), does not contain funding increases for the year 2005. But as I told OSD and the Army witnesses, the out-years always seem to be in the future. We need to start increasing our MILCON and family housing funding now and not wait for the out-years that exist only on paper.

Mr. Chairman, I am also interested in hearing what the witnesses have to say about the housing privatization ventures, how they are progressing and the work the Department and the services are currently doing to get ready for the 2005 BRAC round. So, Mr. Chairman, thank you for the time.

And again, welcome.

Mr. HEFLEY. Thank you, Mr. Ortiz.

I would encourage the witnesses to try to keep their statements to five minutes, if you would, because of the availability of the

room and time constraints. I think we will have plenty of time for everybody to get in whatever you need to say. If you would keep your initial statement to five minutes, I would appreciate it.

The hearing today will consist of two panels. The first panel will be made up of the Honorable H.T. Johnson, Acting Secretary of the Navy and Assistant Secretary of the Navy for Installations and Environment, Brigadier General Ronald S. Coleman, Assistant Deputy Commandant, Installations and Logistics for the Marine Corps, Rear Admiral Christopher Cole, Office of Chief of Naval Operations, Ashore Readiness Division, and Rear Admiral Craig McDonald, Deputy Director of Naval Reserve.

Secretary Johnson, when I go to the circus, one of my favorite deals is to watch the jugglers. They absolutely amaze me at the skill that they have. But you amaze me even more when you talk about juggling. Here you have a guy who is the Acting Secretary of the Navy, he is the Undersecretary of the Navy, and he is the Assistant Secretary of the Navy for Installations and Environment. I do not know how you keep all those balls in the air, Mr. Secretary. But we are glad you are there, and we are glad you are doing it. And welcome today.

Secretary JOHNSON. You always have a lot of alibis. You are working the other problems.

Mr. HEFLEY. That is probably true. Let me go to you first, Mr. Secretary.

STATEMENT OF HON. H.T. JOHNSON, ACTING SECRETARY OF THE NAVY AND ASSISTANT SECRETARY OF THE NAVY FOR INSTALLATIONS AND ENVIRONMENT

Secretary JOHNSON. I am honored to represent the Army and Navy team. And as you mentioned, we have our experts with us. Rear Admiral Cole is the Ashore Readiness Head. He has 32 years of service. He was a helicopter pilot, was navigator on the Theodore Roosevelt and would rather be out in the Gulf today than here. He also has had a lot of experience in bases. He was in Korea, the mid Atlantic region and knows this business very well.

On my right is Brigadier General Ron Coleman. He covers Installations and Logistics for the Marine Corps, 32 years service. He has served as an enlisted member of the Marine Corps. He knows the challenges. He is a logistician and has had many jobs. He also was a J-4 during task force Shining Hope in the Balkans so he knows how to make things happen.

On the far left is Rear Admiral Select Craig McDonald. He is the Deputy Director of Naval Reserves. He is a graduate of the Naval Academy, was a flight officer. And he has also been the executive officer and the commanding officer of Naval Air Station, which is also a joint reserve training center, Carswell at Fort Worth, Texas.

I will outline a few highlights and then have them give a very short summary of their activities.

As you mentioned, we are in a period of fiscal shortfall, getting more so every day. We tried to place proper emphasis on our facilities. And you can rest assured that the people sitting at this table had all the things that you talked about in mind, but we recognize the balance that has to be made between facilities and other activi-

ties. And we obviously support the budget that we bring forward. But we do support the facilities end.

Housing is a priority. We have our men and women forward deployed. They are not concerned about themselves. They are concerned about their families back home. Family housing we have done fairly well in. I will talk about that a little bit more. But this year we tried to place more emphasis on the bachelors. We have \$269 million for bachelor quarters. We have a lot of sailors who do not have a place to live ashore, and we have a program for home port ashore. Two of the big areas we are working are San Diego and Norfolk.

We are building the rooms to meet the DOD standard for everybody except the Marine Corps, which has one plus one, two single rooms and a bath. But, initially with the home port ashore, we are putting two in each room. That is far superior to not having a place ashore. But over time, we will get down to one plus one. As you know, the Marine Corps likes two plus zero, two people in a room and a bath because it builds teamwork. We support that program very much.

We are also looking at the great success we have had in public/private partnerships (PPV) in housing to transition that program into the bachelor housing. There are a few more challenges on the bachelor side, but we believe it can be done.

This year we are proposing prototypes, pilots, if you will, at Norfolk, San Diego and Camp Pendleton. Our family housing is on track to eliminate inadequate homes by 2007. The Marine Corps, by the end of this FYDP will have 95 percent of their housing in the PPV. That works very well because it becomes a self fulfilling entitlement that public/private partnership upgrades the housing and replaces them at regular intervals. The Navy is also making good progress there.

Just last month, we awarded a PPV contract for the Beaufort-Parris Island area for 1,700 homes. This is the second largest we have ever done. We did a larger one at San Diego. We have planned over 17,000 homes in the PPV process at 10 Navy and Marine Corps locations.

We have a very robust MILCON program, \$1.2 billion, as I think you or Mr. Ortiz mentioned. But \$473 million of that is new footprint. I recognize what you are saying and properly so, this does not restore facilities, it builds new ones. Now some of these funds are for Blount Island. For a long time we have wanted to buy the property at Blount Island which is a very, very important part of the Marine Corps maritime prepositioned ships.

If I can tell a side story here, there are a total of 15 of these ships. Eleven of those offloaded in Kuwait in 16 days. When they offloaded their 2 squadrons, the first one, 98.5 percent of the vehicles were fully capable, did not need anything. The second squadron, there were 99.1 percent. That is a wonderful program, and Blount Island plays a big role there. We also are looking for outlying fields for our FA-18 on the east coast and also for joint strike fighter test facilities.

Sustainment and restoration are the programs that you addressed directly. In sustainment, we have done pretty well. The Navy has gone from 84 percent to 93. The Marine Corps has 100

at about 97, which is probably as high as you really want to go. Trying to do 100 percent would be probably very, very difficult to execute.

We have not done as well on restoration, as you correctly pointed out. The Marine Corps has done pretty well. The Navy is backed up a little bit. They are at 140 years when the goal is 67. So that is an area we need a lot of work in.

We certainly have fully funded our BRAC, prior BRAC account. Anything that needs to be done to clean up the bases that we have closed, we have been able to fund those. We are very fortunate to have sold some very good property in California. Those funds go into the BRAC clean up account. We are using those funds to accelerate, do things that will help us finally close out some of these bases.

We certainly have looked at efforts to reduce costs, and we continue to try to find cost savings. Effective 1 October, we plan to have a command for Naval installations that will allow funds to flow directly from the Department of the Navy down to individual bases.

I know you had a hearing last week on readiness and range preservation. We always like to talk about a need and applaud your strong support. But on the other hand, we believe our sailors and Marines and our airmen also are some of the best, most committed people to environmental preservation. So we do a good job in preserving our areas for endangered species and so forth.

I would like to stop now and turn to Admiral Cole, with your permission, sir?

[The prepared statement of Secretary Johnson can be found in the Appendix on page 499.]

Mr. HEFLEY. Certainly. Admiral.

STATEMENT OF REAR ADM. CHRISTOPHER COLE, OFFICE OF CHIEF OF NAVAL OPERATIONS, ASHORE READINESS DIVISION

Admiral COLE. Thank you, Mr. Chairman and distinguished members of the committee. It is a pleasure to be here. I am, as the secretary said, Admiral Chris Cole. I am the Director for the Ashore Readiness Division on the staff of the Chief of Naval Operations. In this capacity, I am responsible for the development of the Navy ashore installation management programs. I would like to make a few additional comments and amplify some of the areas that Secretary Johnson made in his opening statement.

Coupled with mission accomplishment, certainly people are our most important priority. Mission accomplishment and people are inextricably linked, as we are watching today. As you are well aware, and as the secretary mentioned, we have more than 18,000 sailors living on board ships while in home port. These sailors, like all sailors in the Navy, endure a very austere lifestyle aboard a ship while it is on deployment or under way.

And while in home port, we need to offer them a better place to call home, similar to their married shipmates that they work with throughout the deployment and every day. This is a major quality of service issue for each of us, and we are programming and executing projects that will resolve this challenge.

We are also looking at innovative ways such as bachelor housing privatization, as the secretary mentioned, to further expedite getting these sailors ashore and home port ashore. Our goal is to have all sailors who are living on a ship while in home port, to have shore side living spaces by 2008. This initiative will help lessen the divide with regards to housing single sailors compared with their married shipmates.

We are also achieving excellent results in family housing privatization, again as the secretary mentioned. Navy PPV continues to eliminate inadequate family housing and construct some new homes to satisfy deficits, meet or exceed even our DOD goals. We developed a business strategy that limits our liability, manages our risk, and results in the appropriate level of Department of the Navy taxpayer participation as well as providing safeguards and protections.

Our business strategy and acquisition approach over the years has been accepted and applauded by others in government and in the private sector. PPV enables us to provide higher quality, affordable housing to sailors and their families faster and at a lower initial and life cycle cost to the Navy and the taxpayer. PPV is a benefit to the community, refreshing aged housing stock and stimulating local businesses.

Quality facilities and infrastructure are an integral component of readiness. Our installations serve as launch platforms from which our sailors deploy to execute their missions while their families remain behind. They are the places where our sailors and families live, work, train and relax. We remain committed to vesting resources into ashore readiness.

As you pointed out, Mr. Chairman, there are no quick fixes to correct our infrastructure deficiencies. We must look at better ways to do our business and continue to balance our available funding across all facility accounts to sustain our facilities, correct deficiencies and achieve an acceptable recapitalization rate. Continued support by both the Congress and the Administration over the long term is vital to improving the condition of our facilities in order to support fleet readiness both now and in the future.

I sincerely thank you for your continued support that this committee provides to the Navy. I will be more than happy to answer your questions. Thank you.

Mr. HEFLEY. Thank you, Admiral.

Who would like to go next? General Coleman.

STATEMENT OF BRIG. GEN. RONALD COLEMAN, ASSISTANT DEPUTY COMMANDANT, INSTALLATIONS AND LOGISTICS (FACILITIES), UNITED STATES MARINE CORPS

General COLEMAN. Yes, sir, I would. And thank you for the time here, Mr. Chairman and committee members. I want to especially welcome Admiral McDonald because this is the first committee that I have appeared before that I was not a junior member. So, I am glad you are here.

Mr. HEFLEY. General, I would like to say to you, I am swilling down my Dr. Pepper up here in a United States Marines cup. I do not want your colleagues there to think I am prejudiced toward the Marine Corps, but it just happened to be that way.

General COLEMAN. Sir, we do not mind the prejudice, sir. They tell me that is the only one you have. Thank you, sir.

Mr. HEFLEY. The Navy's too cheap to give me one.

General COLEMAN. We can probably get you another one, sir.

Sir, first I would like to thank you for your ongoing support for Marine Corps military construction. Our facilities are a critical component of our readiness to fight and win the nation's battles. Our fiscal year 2004 military construction family housing and reserve budget provides over \$550 million.

Our military construction program this year concentrates in three areas: readiness, compliance and quality of life. This year about half of our 2004 construction proposal is devoted to the acquisition of Blount Island in Jacksonville, Florida and the first phase of an initiative that will ultimately replace and consolidate our sewage treatment systems in Camp Pendleton, California.

The Blount Island acquisition investment we are proposing in 2004 is the second phase of this purchase. The first phase funded in 2000 purchased about 311 acres for \$40 million. The second phase proposed this year will purchase an additional 1,100 acres and maintenance infrastructures for \$115 million.

Ultimately, this property will provide a permanent industrial complex for our maritime prepositioned ships and Norway preposition programs. These programs and the support provided by the Blount Island complex are critical national strategic assets for the logistical support of our Marines overseas.

Readiness related construction also includes new operational and training facilities to support aircraft maintenance for our training missions in Yuma, Arizona and support for explosive ordinance operations in 29 Palms. With respect to compliance at Camp Pendleton, we are proposing the first stage of a long-term capital improvement program for waste water treatment. This initial project is proposed for funding in fiscal years 2004 and 2005 and is a first step in a series of projects that will ultimately improve waste water quality standards.

The quality of life portion of our program continues to meet the Marine Corps goal of providing at least \$50 million for new barracks construction in each fiscal year. We are on track to meet our goal of eliminating our gang head bachelor quarters by 2005. Through a combined construction and privatization approach, we will meet the defense plan and guidance direction to eliminate inadequate family housing inventory by 2007.

In many respects, the status of our physical plants is improving. Our plant replacement rate has improved from 97 years in 2003 to 88 years in 2004. And we intend to ultimately meet the plant replacement rate goal of 67 years by 2007.

Our facility sustainment is fully resourced. This means that for the second time in as many years our plant conditions will not become worse. In 2003, installation readiness report will state 63 percent of our ratings are C-3 or C-4. Fully resource and sustainment will stabilize these ratings, and our investment in restoration and modernization in the future will improve the readiness posture of our facilities.

We must continue to strive for additional funding and pursue additional innovative avenues to support our Marines and their fami-

lies. They deserve our support. Family housing, bachelor housing and operation facilities construction supported by this committee has a visible, long-term effect on the Corps. The Marine Corps thanks you for your continued support. Thank you, sir.

Mr. HEFLEY. Thank you.
Admiral.

**STATEMENT OF REAR ADM. (SEL) CRAIG MCDONALD, DEPUTY
DIRECTOR OF NAVAL RESERVE**

Admiral MCDONALD. Thank you, sir. Mr. Chairman, members of the committee, thank you for giving me the opportunity today to represent another portion of the Navy, Marine Corps team. That would be your 88,000 Naval Reservists across the country.

First, let me thank you for the funding support you have provided over the previous years. The resources you have provided have upgraded and built new facilities in support of our reserve sailors and Marines. On behalf of all of them, I thank you.

Our budget request for fiscal year 2004 totals about \$28 million, of which \$16 million is a Naval Reserve project for a C-40 hangar at Naval Air Station North Island, California. This project supports the Naval Reserve's top priority to transition from an aging C-9 aircraft to the C-40 aircraft.

Again, I want to thank you for giving me the opportunity to be here today, and thank you for the fine support you have provided to the active Reserve Navy, Marine Corps team. Thank you, sir.

Mr. HEFLEY. Thank you.

Very quickly and then we will turn to questions of the members.

Admiral Cole, I am very happy to see you put an emphasis on getting those guys off the ships. And we want those 18,000 off those ships. When they come home, they ought to come home.

Admiral COLE. Yes, sir.

Mr. HEFLEY. They all understand the conditions you have to live in onboard ship. But, doggone it, when they are in port, they should not. Many of you have heard me tell this story before. But I was at Mayport, and I met with a group of enlisted people and asked how many of you are going to make a career of it. And out of about 20, one raised his hand. And he had been in 19 years.

The rest of them are not going to make a career. And they gave me five reasons why not. One of the big reasons was they did not want to live on the ship when they were home. And so you are putting an emphasis on that, and I hope you will move that along just as quickly as you can. I think that is very, very important.

General Coleman, when Mr. Ortiz and I headed up the MILCON Subcommittee several years ago, the Marine Corps was the farthest behind in terms of—or ahead in substandard housing, I guess you would say. You had more than anyone else. You were projecting more years out to get standard than anyone else. And it did not seem to be a very high priority at that time to the Marine Corps. I have lost track of it in these years since I am no longer doing that. Where do you feel you are in comparison with the rest of the Navy?

General COLEMAN. Sir, I would humbly say we are well ahead of, not only the Navy, but all the services. We will have no inadequate housing by 2005, sir.

Mr. HEFLEY. Well, that is indeed very good news. And I commend you on that. Why do you not take on the one plus one standard that the rest of the services are doing? Why do you do the two plus one?

General COLEMAN. Two by zero, sir, which means—

Mr. HEFLEY. Two by zero.

General COLEMAN. —two Marines to a room. Sir, we feel, we the Marine Corps feel that builds a unit cohesion, teamwork, esprit de corps and an overly large concern of having our young Marines in a room by themselves. The protection is much stronger if you have a roommate. Most of our junior troops are below the age of 20, and we are extremely concerned about their well being, sir.

Mr. HEFLEY. Well, you know a lot more about it than I do. I would question that—I would wonder if everybody does not need some time, particularly in the kind of group dynamics that you have in the Marine Corps, if everybody does not have some time that they can get away and have their own space and be by themselves and kind of retreat from the rigors of the day. But obviously you do not feel that is an important value.

General COLEMAN. I think it is important, sir. I think that they certainly can have that, but we still feel confident that we have their best interests in mind by having two youngsters to room together, sir. Now once they become an E-4, E-5, they can have a single room, sir. But not at this time, sir.

Mr. HEFLEY. Well, I guess I should not get on you about that because I remember my daughters in the sorority house at college. And they lived worse than your Marines do. So they must have felt the same way. But it looked to me like it would be a good idea to have some space of your own.

Mr. Ortiz.

Mr. ORTIZ. Thank you, Mr. Chairman.

Mr. Secretary, I know that the Navy's pursuing privatized housing. And I am a great supporter of these public/private ventures. In fact, this idea was born in Kingsville, Corpus Christi. However, the privatized housing at the Corpus Christi Naval Air Station has experienced some real, real problems with very poor, shoddy workmanship. I hear from families down there that there is also a real problem with mold.

Secretary JOHNSON. Yes, sir.

Mr. ORTIZ. And I do not know if you heard about this or not. I know that the commanding officer (CO) down there is doing the best she can to correct this problem. But I think that the CO is going to need some help from the Navy headquarters. We have no idea how much this is going to cost, but I think that maybe the contractor who built this housing should be responsible. My question would be, we are just wondering—and this is one of the first units that went up—what went wrong with privatized housing in Corpus Christi? And if you are aware at this point, what is the Navy doing to fix it? What can we do when we have a contract with a contractor otherwise to make sure that the problems at Corpus Christi are not repeated in the Navy's other public/private housing that we can learn from this experience? Maybe you can enlighten me on this, Mr. Secretary.

Secretary JOHNSON. Yes, sir. I will talk in general and then let the admiral talk specifics. With public/private ventures, the partner—we as one of the partners, have to fix it at no cost to the government. So fixing it is our responsibility of the partnership. Now why we let it happen, I was not personally aware of that.

I think Admiral Cole found out a few minutes ago about it. In every other public/private venture we have gotten exactly the opposite. I do not know about the mold there, but that will be fixed. That is a partnership problem, not a government problem.

Mr. ORTIZ. And before we go to the admiral, now when we do have a contract such as this, do we have somebody to oversee the construction to be sure that they do not put, you know, second, third hand material in the construction of the facility?

Secretary JOHNSON. Yes, sir. And it is not them. It is us. We are a partner. Depending upon the partnership, 35, 40 percent is the Department of Defense, in this case, the Department of the Navy. And we are a partner, and we certainly oversee our other partners in this partnership. I do not know the uniqueness of Corpus Christi. It is the first time I have heard of it.

Admiral.

Admiral COLE. Yes, sir. Thank you, Mr. Congressman. I was down in beautiful Corpus Christi last month and met with Admiral Boyington. We discussed this very issue along with many other things. He had suspended the partnership. The developer has suspended construction of the houses that were on base. Admiral Boyington indicated he was very happy with the contractor who was handling the off base construction.

But it really was the on base, his neighbors very near where he is. And as soon as they saw a problem, they suspended construction and did the kind of things that you need to do when a contractor is not performing as specified. So, the system worked. We are just very sad for the families that could have lived in that housing that the contractor was not performing up to specifications from the get go.

Secretary JOHNSON. The great advantage of the public/private partnerships—we have had others that have not worked very well. But we are the recipient. If the other partner goes bankrupt, it comes to us because we are a financial partner and a full partner. And we have control.

Admiral COLE. And if I could add?

Mr. ORTIZ. Yes, sir. Go ahead.

Admiral COLE. The morning I left the contractors—and I honestly do not know if it was a different contractor. But they were back at work and starting in on the houses again. So I think we have a solution. And I will certainly get back with Admiral Boyington in any case.

Mr. ORTIZ. Well, very good. I am happy you are going to stay on top of it. And General Coleman, I am glad to see you wearing that star. If I remember correctly, last hearing you were still waiting to get it. Congratulations on your promotion.

Admiral COLE. Thank you very much, sir.

Mr. ORTIZ. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Snyder.

Dr. SNYDER. I have no questions, Mr. Chairman. Thank you, gentlemen, for being here.

Secretary JOHNSON. Thank you, sir.

Mr. HEFLEY. Mr. Snyder, that was the most eloquent speech I have ever heard you make. Thank you.

Mr. Evans.

Mr. EVANS. Pass.

Mr. HEFLEY. Thank you.

Ms. Miller.

Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman, Mr. Ortiz, members who have come here today to testify. I have a couple of questions pertaining to the territory of Guam, the Pacific area. Maybe you, Admiral or the secretary can answer this. How important is it to the readiness of the Navy in the Asia Pacific region that the installations and the facilities damaged by super typhoon Pongsona be repaired? Is this a priority?

Secretary JOHNSON. It is certainly a priority. And we have found the funds to make all the repairs.

Ms. BORDALLO. The reason I am asking is that my office was called just a couple of hours ago by Pacific Command. They do not know if the emergency funds that they need are included in the war on Iraq supplement which is to be submitted to Congress either Friday or possibly next Monday. So you are saying it is out, it is not in the supplemental budget?

Secretary JOHNSON. We have to be careful. We are talking two different things. One is to repair and get the operations back working. That has been funded.

Ms. BORDALLO. That is funded or not?

Secretary JOHNSON. Yes.

Ms. BORDALLO. That is funded? So,—

Secretary JOHNSON. The repair work.

Ms. BORDALLO. That is right. There were two requests made by both the Navy and the Air Force. The one included both the repair work and further enhancement of the bases.

Secretary JOHNSON. The enhancement is a different story. In our case, there was a requirement or desire to fund \$146 million to improve hardened utilities and so forth. That is to take care of the next storm.

Ms. BORDALLO. That is right.

Secretary JOHNSON. But Guam is operating, has been repaired. And the status of the next one we are not confident of. We cannot talk about what is in the supplemental and what is not. When the President submits a supplemental, we would be pleased to talk about what finally comes over. But that is the only part that is questionable. And it is preparing for the next storm as opposed to repairing from the last storm.

Ms. BORDALLO. So the request for repair of the last storm is taken care of?

Secretary JOHNSON. Yes.

Ms. BORDALLO. All right.

Secretary JOHNSON. We have no choice in that. We have to get the bases operating again.

Ms. BORDALLO. But did they receive the funding?

Secretary JOHNSON. That comes from within. In other words, it is a must pay bill that we have. And we obviously have paid that one. And any time we have to recover from a storm or any other catastrophe, that is the highest priority. Now moving forward and increasing the hardness, if you will, that is a different story.

Ms. BORDALLO. Yes, I understand. Yes, there is the two requests, the one to repair what they already have. But I remember when they first put in their request, it was the two together. Then they separated them.

Secretary JOHNSON. Well, they is us.

Ms. BORDALLO. That is right.

Secretary JOHNSON. And the two requests should always be separated. One is a new MILCON which we have to bring to you. The other one is one that we have to find the funds to fund.

Ms. BORDALLO. Yes.

Secretary JOHNSON. So——

Ms. BORDALLO. So——

Secretary JOHNSON. They should never have put the two together if they did.

Ms. BORDALLO. They did in the beginning.

Secretary JOHNSON. And——

Ms. BORDALLO. They did. And then it was separated.

Secretary JOHNSON. Only at Guam. They did not in the Department of the Navy. In other words, locally they tried to put the two together I assume. But once it gets up into the funding mechanism, they are quite separate and quite different.

Ms. BORDALLO. What does the future hold for the hardening of the facilities and that type of thing on the bases?

Secretary JOHNSON. That is still a requirement, a desire. Whether it will be in the supplemental or not I cannot address. No one can address anything in the supplemental until it is submitted. I do not know where Guam gets their information.

Ms. BORDALLO. Well, it was Pacific Command that called us today to wonder if it was included.

Secretary JOHNSON. I would be glad to talk to them.

Ms. BORDALLO. Thank you. Thank you, Mr. Secretary.

Secretary JOHNSON. Thanks.

Mr. HEFLEY. Candice Miller.

Ms. MILLER. Thank you, Mr. Chairman. Just a quick question to Mr. Secretary. I appreciate all of the witnesses coming today. I am a new member and just understanding some of your nomenclature here, I think you are referring to it as PPV, all this privatizing of base housing which I am very supportive of. I think that is a great idea, wonderful thing. And as you were articulating, some of the different percentages of the base housing that you have, were you saying that at stateside? Are you doing the same thing overseas as well?

Secretary JOHNSON. It is stateside. We have similar programs. But overseas, it is a different program. In other words, we might have an international partner. It is public/private venture. The Marine Corps has a similar one. I think the Air Force does, too. But they call it something different.

Ours is PPV, public/private venture. And we go out, find a partner and invest together. They will normally go to the marketplace

and borrow funds. We either bring in dollars, property, land and so forth. And that is how we determine the percent partnership.

Ms. MILLER. I see. Thank you.

Mr. HEFLEY. Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman. This question is for the Marines. I noticed that you had some sewage treatment facilities being built over at Pendleton. I know that that is necessary. I noticed that in the line item that that is going to a tertiary plant. Obviously, we have water problems throughout California.

I was just curious what are you going to do with the excess? Are you going to repump that excess water back into the ground table for future use or use it for plant irrigation or just dump it into the ocean? Since that is a valuable resource, I am just pointing that out to you, General.

General COLEMAN. Yes, sir. So, is that a question, sir? Or,—

Mr. CALVERT. I was just curious at what they intended to do with the excess water that comes out of that plant.

General COLEMAN. Sir, I would have to—I am not technically competent enough to answer that, sir.

Secretary JOHNSON. In general, we try to use it in a reuse way, irrigation and so forth. But we will get an exact answer for Pendleton.

[The information referred to can be found in the Appendix beginning on page 541.]

Mr. CALVERT. Great. Thank you, General, I appreciate that. Thank you.

Mr. HEFLEY. Ms. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman. And thank you all for being here. I especially want to applaud your efforts, Secretary Johnson, for help with the public/private ventures. They have been very important, as you know, to San Diego and to the former Navy training center. I have had an opportunity to meet with a number of families there, and they are delighted. It is making a huge difference in the way they feel about their service. And I appreciate your efforts.

I mentioned, yesterday at a hearing, the unintended consequences of dollars being basically carried over to service members in their checks when they have their dollars for their public/private housing. We have run into a real difficulty with the eligibility of children for free and reduced lunch.

That problem was solved, but we continue to have a problem with families who are receiving Social Security benefits for children who have special needs because it appears as if, you know, they are earning more than they actually are. I just wanted to bring that to your attention as well and see if you have any ideas whether this is being dealt with.

Secretary JOHNSON. We work very hard to make sure that our people are not disadvantaged. As you correctly point out, the Department of Agriculture has said that basic allowance for housing does not count when you look for reduced priced meals or free milk, child nutrition program, school breakfast programs, special milk and so forth. There might be some other areas that we can work. We think that is a small problem. But any problem is not small to the people that are affected.

Mrs. DAVIS. Right. Well, the school lunch program was certainly a big problem for schools who have large military populations.

Secretary JOHNSON. But they are excused now. In other words, that does not count towards qualifying for the school lunch.

Mrs. DAVIS. Yes, that is correct.

Secretary JOHNSON. Some of the others——

Mrs. DAVIS. And we were really happy to help fix that. But I think on the Social Security issue, that remains a concern of those families.

Secretary JOHNSON. I am not familiar with that one. If you would have your staff let us know, we will try to work at—anytime you have these unintended consequences, we obviously build these houses, and they are treated as if they are on the private economy. And people pay rent. And if you pay rent, you get basic allowance for housing.

Depending upon where it is located in agreement with a local agency, we may or may not pay taxes on the property. Fortunately most of it is still government property out leased. But unintended consequences, I think the chairman mentioned, every good deal brings up some bad side affects.

Mrs. DAVIS. That is right. Yes. We know for these families who are impacted with the Social Security issue it is a big problem.

I might mention, Mr. Chairman, that we actually just had a call in the office because there is some misunderstanding out in the communities about the impact that combat pay has when it comes to receiving Social Security benefits where there is a disabled child. We do not think that this should be a problem, but in fact, people are getting misinformation. And we are working hard to correct some of that as well. But if you——

Secretary JOHNSON. We are quite fortunate to have a very strong family support system. And we try to work these questions through them. And any time you hear some, we will try to work them. Again, unintended consequences. It helps the family. But sometimes it might put them over a threshold, and they lose something else. That is not the intent of course.

Mrs. DAVIS. Yes. Right. We understand. Thank you. I appreciate that. I also wanted to just acknowledge and thank you again for working with us on the Fort Rosecrans National Cemetery issue and expansion of that into Miramar. As you know, another unintended consequence in trying to define the land and whether or not that land was being used for mitigation or not is an issue that has come up as well. I look forward to you working with that.

Secretary JOHNSON. Mr. Chairman, if I could say something on this? We worked very carefully with Veterans' Affairs to provide cemetery land in a proper place. One of the most beautiful places is Fort Rosencrans in San Diego. There is no more space. So we had some land at Miramar that we did not want structures on.

And certainly veterans do not mind an airplane flying over at the memorial service. It really worked Veterans' Affairs, the members of your community and our problems very well. We have done that at Pensacola, I think, another place that we had done it on the final approach into an airfield. We did not want anything there, but a cemetery worked very well. And it helped everybody.

Mrs. DAVIS. Thank you. And if I may, Mr. Chairman, quickly, I just wanted to thank Admiral Cole for your work in housing single sailors. I think if we can work on that as quickly as possible, that obviously will make a difference in the quality of life and will be very important to them.

And to Admiral McDonald, thank you very much for continuing to advocate strongly for the aircraft hangar project. I am a big supporter, and I appreciate the fact that you are continuing to work hard on that. Thank you.

Mr. HEFLEY. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. I want to thank all of you gentlemen for being here.

Secretary Johnson, you know I cannot miss the chance to find out how much it is going to cost to build the new base for the F-18 E and F, you know the one that we could not have used Cecil Field for.

Secretary JOHNSON. Well sir, first of all, we are not building a new base for the F-17 E and F.

Mr. TAYLOR. Well, you have got \$28 million budgeted. What are you going to do with the \$28 million?

Secretary JOHNSON. That is for an outlying field.

Mr. TAYLOR. Okay.

Secretary JOHNSON. Yes, sir. Now we have an environmental impact statement (EIS) at the current time deciding where to bed down the ones on the east coast. The west coast has been taken care of. And the EIS, the ones we are focusing on are Oceana at Norfolk and at Cherry Point in North Carolina. We need a new outlying field regardless. And it needs to be between Cherry Point and Oceana. Cecil Field would not work. It is too far away for an outlying field.

Mr. TAYLOR. So is \$28 million going to be the total cost for this outlying field?

Secretary JOHNSON. I cannot address that. Can you?

Admiral COLE. I believe it is incremental. But I would like to take that for the record, and we will get back to you with the correct information.

[The information referred to can be found in the Appendix beginning on page 541.]

Mr. TAYLOR. You know, we are having a hard time trying to put together a budget. No one is going to give us an estimate of how many troops we are going to have in Iraq for the next 10 years. I would think this would be a little bit easier to budget. I would very much appreciate what you think the cost of that is going to be. And also keeping in mind that in the very near future, the joint strike fighter (JSF) comes on line. I presume you are going to need an additional field for it. Is that accurate? Is that—

Admiral COLE. Well, both of those decisions have yet to be made. The reason I cannot at this moment give you an exact figure for the outlying field is because it has not been selected yet. It will make some difference as to where it goes as to what the price will be. And of course, the JSF will also come under the environmental impact statement decision making process.

Mr. TAYLOR. When you say an outlying field, what all will you construct there? Obviously a runway.

Admiral COLE. Sir.

Mr. TAYLOR. Hangars?

Admiral COLE. Probably not. It would just be a runway. There would be some instrumentation for the pilots to do their carrier landing practice. But that is what it is, a practice field for the carrier landing. So it is really quite small, similar to White House near Cecil Field.

Mr. TAYLOR. So a field like that is going to be 8,000, 10,000 foot long?

Admiral COLE. I am not sure. It is a big runway because of the high performance aircraft, yes, sir.

Secretary JOHNSON. But that sounds the right size, sir.

Mr. TAYLOR. How many acres of land would that entail purchasing?

Secretary JOHNSON. We will have to give you that for the record, sir. And second, we do not know because the environmental impact has not been done. And we have not selected a location. But we can give you a ball park.

Mr. TAYLOR. Secretary, the reason I find that a little hard to believe is since encroachment is such a big problem on all of our installations, I would certainly hope that you would have a pretty good idea of how big a tract of land you are going to need so as to preclude future encroachment problems and start setting up glide path restrictions on those areas even outside of what you own.

Secretary JOHNSON. Absolutely. We can give you a ball park. But until we select the exact field, we will not know the exact acreage. We can give you the size that we are looking for. But if we select x, it will be one thing, y, another. One that we are looking at is in a wetlands area. And by being in a wetland area, you do not have so much trouble with encroachment. Another one, there might be a nearby town. So,——

[The information referred to can be found in the Appendix beginning on page 541.]

Mr. TAYLOR. With all due respect, Mr. Secretary, when you say the wetlands area you do not have to worry about encroachment, it is the EPA and Fish and Wildlife you are going to have to worry about.

Secretary JOHNSON. Yes, sir. That is why we——

Mr. TAYLOR. You gave up three, no, four nice, dry runways at Cecil Field. You did not have to worry about wetlands.

Secretary JOHNSON. I am not prepared to readdress Cecil Field, sir. That was a decision made several years ago.

Mr. TAYLOR. In a previous round of BRAC——

Secretary JOHNSON. Yes, sir.

Mr. TAYLOR [continuing]. When they failed to look past their own noses as to future defense needs.

Secretary JOHNSON. Yes, sir.

Mr. TAYLOR. I do not have a lot of confidence based on those three rounds that we are going to do better in the future. I was just curious how you would feel about a delay in the BRAC process given the uncertainties of the world today?

Secretary JOHNSON. Sir, the BRAC process that you have crafted makes sure that we make those——

Mr. TAYLOR. Congress crafted, sir. I did not have a hand in it. Secretary JOHNSON. I am sorry. The Congress. It makes us look forward and makes us make those tough decisions. In the past we did not have to do a 20 year force structure. This year, in 2005 we do. And it is a very good process. I am sure many of us were concerned about it when it was passed. But when you look at it for execution, it is a good process.

Mr. TAYLOR. Mr. Chairman, one last question if I may. I am curious if you can name one Naval or Marine Corps installation that you think needs to be closed.

Secretary JOHNSON. Sir, no one associated with the Department of the Navy will even think about a base that needs to be closed. What we are supposed to do is look at the force structure, decide what functions are needed to support that force structure, and do an inventory. And then we can look at bases. We are trying desperately not to focus on bases until we know the functions that we need and have an inventory of availability. Then, the bases can be selected. If we try to preselect or take bases off the list, we would not be serving you or the nation very well.

Mr. TAYLOR. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Taylor, would you support that outlying field being in Colorado Springs since we do not have Cecil Field? I agree with you about Cecil Field.

Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman. I do not have any questions. I just want to thank you gentlemen for being here. Mr. Secretary, I had the privilege of having in my district, one of the finest naval shipyards in the world, the Norfolk Naval Shipyard. And I just appreciate all that you have done to keep that strong. We certainly realize in a conflict like this just how important it is to keep those shipyards strong and viable. They are very proud of the work that they do. And I just want to let all of you know that those individuals I represent are very proud of the work that all of you do for the American people. We just thank you for that.

Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Rodriguez.

Mr. RODRIGUEZ. Thank you, Mr. Chairman. Secretary Johnson, let me ask you. Resident Commissioner Acevedo Vila has talked to me a little bit about Vieques. He has informed me that, at least that he thinks, you are in direct contact with the Department of the Interior and the Environmental Protection Agency (EPA). Basically, he is concerned about the clean up at Vieques.

Both the community in Puerto Rico and in Vieques have a need in terms of wanting to get some kind of commitments from the Navy to clean up the area there, not only in response to the concerns of the constituency of Vieques and Puerto Rico, but also in terms of the environment there. I was wondering if you would make some comments in reference to that.

Secretary JOHNSON. Yes, sir. The law is very specific that we pass the property—it is on east Vieques, the current part that we are using—to the Department of the Interior. They have agreed to accept that. We are supposed to leave by 1 May. I think we are going to transfer on 28th of April.

And then the Department of the Interior will determine the future use of the land. And we will determine the clean up to meet their future use. That seems to be working along well. We are working with Interior. Then, Interior brought in EPA and the commonwealth. We did not directly go to the commonwealth.

Mr. RODRIGUEZ. Can I interrupt?

Secretary JOHNSON. Yes, sir.

Mr. RODRIGUEZ. Are you going to continue to hold responsibility for contamination? Or is the Department of the Interior?

Secretary JOHNSON. The Department of Defense can never relinquish responsibility for any contamination that may have been caused by—

Mr. RODRIGUEZ. Okay. You are still being held responsible for any form of contamination there?

Secretary JOHNSON. Yes. By law, that is something that can never go away.

Mr. RODRIGUEZ. Yes. Are you talking to members—you know, I have only been here seven years, but my predecessor had been here five years. I worked 8 to 10 years on a project where one base property went to the Department, in this case, for national parks and where I had 16 residents who by imminent domain had been told 8 years before, because they built the park, that they needed to leave those homes.

Yet, they could not sell because the Department of the Interior did not want to take responsibility for the contamination. The Department of—in this case—the Air Force did not want to take the full responsibility for it. And these residents—I mean, I had them in my backyard. This is not Vieques. This is back home.

We had them for 8 years before we got—and so, I am surprised that the Department of the Interior would be willing to take it over because from one department to the other, they could not agree. So that is the case? You are saying they took it over?

Secretary JOHNSON. They will receive the property from the Department of Defense—

Mr. RODRIGUEZ. Yes.

Secretary JOHNSON [continuing]. On the 28th of April or thereabouts. They will control the property. We will be responsible for any environmental clean up.

Mr. RODRIGUEZ. Have they started the assessments on the clean up?

Secretary JOHNSON. They have not yet decided exactly how they are going to use the property.

Mr. RODRIGUEZ. Okay.

Secretary JOHNSON. Then, the clean up will be determined from that. EPA is looking at whether we should use a circular. Those are two different approaches in clean up. They have not made final determination. No, sir.

Mr. RODRIGUEZ. Okay. So I guess the determination of the usage will determine the type of clean up?

Secretary JOHNSON. Yes, sir.

Mr. RODRIGUEZ. Okay. Thank you very much.

Secretary JOHNSON. Thank you, sir.

Mr. HEFLEY. Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman. I regret my duties in another subcommittee delayed my arrival here. So I probably missed some things that I wanted to hear and some questions I wanted to ask that probably have already been covered. But if I may just direct one or two questions to the panel in general.

As I look through the material, I am simply concerned that the level of military construction is awfully low and obviously down from last year considerably. And I understand concerns about BRAC. But I have the sinking feeling sometimes that we are in the difficult situation of postponing the important to deal with the immediate. And I understand that.

I mean, you have to make those kinds of tough decisions on a regular basis. So, I would ask you to look a little forward for me in the future past this budget year and give me some idea of how you see military construction going in your respective areas of responsibilities over the next four to five years.

Secretary JOHNSON. I do not have insight. Perhaps you do. But we are required to look for the five years at such things as restoration. And we do meet the requirements at the end of the defense program. As far as MILCON in specific, I cannot address that. We could address any one that you wanted to address if you have a request.

Mr. COLE. Just generally speaking, do you think the expenditure levels have been adequate, are they appropriate, too low? Could you use more?

Secretary JOHNSON. Yes, sir. As we mentioned earlier, the people sitting at this table, and I am sure the Air Force, too, our job is to submit things for the budget. We understand when the balances are made, and we support those. Of course, we would like some more MILCON. But when we look at the balance, we think we have the right balance in the Department of Defense and in our case, the Department of the Navy.

Mr. COLE. Okay. No further questions. If I may, Mr. Chairman, thank you, gentlemen, very much for your service to your country. I appreciate it very much. You have a difficult job.

Mr. HEFLEY. Thank you, Mr. Cole. Mr. Secretary, in your response to Mr. Taylor about the base closure process, you talk about first looking at the force structure and then looking at the inventory of what have so that we can see how the force structure fits into our inventory and then doing the closure process to have everything on the list.

I do not understand why after you look at the force structure—I agree with that, you look at the inventory—at that point, then the next step, it seems to me is you could take off the table those bases that you know you are not going to close. I guarantee you you are not going to close Annapolis. And you are not going to close Mayport. We would be crazy. And you are not going to close Blount Island. We would be crazy. We are not going to close Norfolk. You would be crazy to do that. So why do they need to be on the table?

I know that the Defense Department does not want to bite the bullet and say this, but who is better qualified after you have done this survey? Some committee that was appointed is better qualified to determine what you absolutely have to have?

It seems to me you should make the decision about what you absolutely have to have. And then those that you might or might not, they ought to go on the list. But every community in the country does not get all riled up about closing. I do not want the people in Norfolk, for instance, to hire lobbyists up here and raise lots of money through your chamber of commerce and your military affairs committee in order to make sure you are not going to be on the closing list. Because you are not going to be on the closing list. And yet they feel they have to do that. And that happens all over the country.

Secretary JOHNSON. Sir, the process makes those decisions fairly quickly once you have done the three things I have described. This time we are taking an additional item into consideration at the Department of Defense. Before we do the force structure we are trying to look at it in a joint fashion.

The Navy might have some facilities at Bolling Air Force Base here and vice versa. We are trying very, very hard to use the process to look at jointness, to use our facilities the best way possible. I trust that when we come up with a final answer, if you are not affected, you will think it was done properly. If a community is affected, they can never think it is done properly. But we want to do it in a fashion that is fair for everyone, and we are working very, very hard under the rules as they are laid out.

Mr. HEFLEY. I am not going to argue this with you any more. But what this presupposes is that we cannot trust you at the Pentagon to make those decisions about what you absolutely have to have. And boy, if we cannot trust you, the guys that are the experts at it, then I do not know who we could trust.

I know I am fighting an uphill battle on this because none of you want to do this. But I intend to continue to pursue this effort. And I wish you would at least take a look at the idea and see if there is some viable way to do this. I am not at all sure you are going to get a base closing round in 2005 unless we do tweak this system a little bit. And I know you want one.

I know it is in the law now. But we could pass a law this year, next year that says no, we are not going to do it. There is a movement here to do that. So, you might want to look at ways to tweak this to make it work better.

Secretary JOHNSON. Yes, sir.

Mr. HEFLEY. But, you know, in saying that, let me say I appreciate very much you gentlemen being here. Your testimony is very, very helpful to us. We will be coming back to you as we go through this process. We will have some more specific questions, I am sure. Help us to help you because we want to get you what you really need to have.

Secretary JOHNSON. I would like to make a statement in closing, if I may, sir. Your men and women—and I can only speak for the Department of the Navy, the Marines and the Navy. And I am sure it is true in the other services. We have never had better retention. We have never had better recruiting. And we have never had better support from our Reservists. We have disrupted many lives by calling Reservists back. And they are proud to serve our nation around the world. I hope that you get that same feeling from your communities. We are proud to serve you, sir.

Mr. HEFLEY. Well, we do indeed. We are proud of you. And we are proud of all the young men and women who are serving for us. Thank you very much.

Secretary JOHNSON. Thank you, sir.

General COLEMAN. Thank you, sir.

Mr. HEFLEY. All right. The committee will come back to order. The second panel will talk about programs for the Department of the Air Force. And this panel is made up of the Honorable Nelson Gibbs, Assistant Secretary of the Air Force for Installations, Environment and Logistics, Major General Earnest O. Robbins II, the Air Force Civil Engineer, Brigadier General David Brubaker, Deputy Director of the Air National Guard and Brigadier General William A. Rajczak. I know I am not doing that right, so I will let—

General RAJCZAK. Rajczak, sir.

Mr. HEFLEY. Okay. Good, good. Thank you. Deputy to the Chief of the Air Force Reserve. I would like to say that General Robbins, I understand that you are going to be retiring this spring.

General ROBBINS. Yes, sir.

Mr. HEFLEY. We want to recognize that and just say thank you so much for your contributions to the Air Force, but not only to the Air Force, to your country over a very distinguished career.

General ROBBINS. Thank you, sir.

Mr. HEFLEY. We appreciate what you have done.

General ROBBINS. Thank you.

Mr. HEFLEY. Mr. Secretary, are you going to start it off?

Secretary GIBBS. Yes, I will.

Mr. HEFLEY. All right.

STATEMENT OF HON. NELSON F. GIBBS, ASSISTANT SECRETARY OF THE AIR FORCE, INSTALLATIONS, ENVIRONMENT AND LOGISTICS

Secretary GIBBS. Mr. Chairman, Mr. Ortiz, other members of the committee, thank you very much for the opportunity for the four of us to come and talk with you about the Air Force overall military construction program. I will keep my remarks very brief. General Robbins and my two associates from the reserves and the guard will speak more specifically about their particular programs.

But in total, the Air Force in fiscal year 2004 is requesting a five percent increase in its overall budget for military construction. In fiscal year 2003, the President's budget request was approximately \$4.2 billion. In the current fiscal year, the request is approximately \$4.4 billion. This includes military construction, military family housing, including the privatization projects. It also includes the sustainment, restoration and modernization of our facilities.

The Air Force very carefully weighed the decisions that it had to make in the request that it sent forward. And it is pleased with the results that we have been able to achieve in this President's budget request. I look forward to responding to any questions that you may have. General Robbins now will talk more specifically about the Air Force Active program.

[The prepared statement of Secretary Gibbs can be found in the Appendix on page 515.]

Mr. HEFLEY. Thank you.

General Robbins.

**STATEMENT OF MAJ. GEN. EARNEST O. ROBBINS II, THE AIR
FORCE CIVIL ENGINEER**

General ROBBINS. Yes, sir. Thank you. Mr. Chairman and members of the subcommittee, good afternoon. I appreciate the opportunity to appear before you to discuss the Air Force's fiscal year 2004 military construction program. Air Force missions and Air Force people around the world depend upon this committee's understanding of and support for our infrastructure programs. That support has never wavered. And for that, we are most grateful.

Our total force military construction and military family housing programs are essential to Air Force operational needs, work place productivity, and quality of life. While the Air Force has always acknowledged the importance of robust funding for facility sustainment and recapitalization, in the past, as you noted, sir, we have found that higher priority requirements have not permitted us to address all the problems we face with our aging infrastructure.

We turned a corner with our fiscal year 2002 and 2003 military construction and family housing program requests, each in excess of \$2 billion. You supported those requests and increased them to nearly \$3 billion, making these last two years' infrastructure investment programs the largest in more than a decade. And we sincerely appreciate your support.

We are continuing in this positive trend in fiscal year 2004. We are requesting more than \$2.4 billion for total force military construction and military family housing, a \$160 million increase over last year's budget request.

In addition, we have maintained our focus on operations and maintenance (O&M) in the sustainment, restoration and modernization funding. The fiscal year 2004 budget request includes nearly \$2 billion in critical infrastructure maintenance and repair through our O&M program to begin buying down our backlog of much needed repairs to our real property inventory.

When one considers the entire infrastructure spectrum of military construction, family housing, and O&M sustainment, restoration and modernization, we plan to invest more than \$4.4 billion in fiscal year 2004.

I will now quickly summarize our military construction budget request for the fiscal year. New weapons systems will provide the rapid, precise, global capability that enables our combat commanders to respond quickly to conflicts in support of national security objectives. Our fiscal year 2004 total force new mission military construction program consists of 43 projects totaling more than \$273 million.

The Air Force is committed to taking care of our people and their families. Quality of life projects acknowledge the increasing sacrifices our airmen make in support of the nation and are pivotal to recruiting and retaining our nation's best.

The Air Force is committed to meet the Department of Defense goal of providing safe, affordable and adequate housing for our members. Our fiscal year 2003 budget request reflected an increase of more than \$140 million over the previous year. We have built on that increase with our fiscal year 2004 request.

For 2004, it is \$700 million we have requested for housing investment and nearly 2,100 units at 18 bases and provides more than 1,500 units at 8 bases and supports privatization of approximately 7,000 units at 7 bases. Our fiscal year 2004 housing operations and maintenance program totals nearly \$835 million.

Just as we are committed to providing adequate housing for families, we have an ambitious program to house our unaccompanied junior enlisted personnel. It will cost approximately \$1 billion to execute the Air Force dormitory master plan and to achieve OSD's fiscal year 2007 goal to provide our airmen with adequate dormitory rooms. This fiscal year 2004 budget request has us on track to meet that goal.

The fiscal year 2004 dormitory program consists of 12 dormitory projects at 11 bases for a total of \$203 million. On behalf of all the airmen affected by this important quality of life initiative, I want to thank this committee. We could have never made it this far without your tremendous support.

The quality of our installations overseas continues to be a priority for us. Even though the majority of our Air Force personnel are assigned in the United States, 16 percent of our forces are permanently assigned overseas, including 29,000 Air Force families. The Air Force overseas base structure has stabilized after years of closures and force structure realignments. At this decreased stabilized level, our overseas infrastructure still represents 11 percent of our Air Force physical plant.

Our fiscal year 2004 military construction request for European and Pacific installations is \$171 million for 22 projects in the United Kingdom, Germany, the Azores, Italy, Turkey, Korea, and Wake Island. We ask for your support of these important operational and quality of life projects.

In conclusion, Mr. Chairman, I thank the committee for its strong support of Air Force military construction and family housing projects. As you know, sir, this is my fourth and final year that I have had the honor and privilege of bringing our program before this committee.

On 1 June this year I will retire from our Air Force after 34 years. So next year there will be a new messenger. I know he will find the same warm reception I have enjoyed with your members and with your staff. I thank you for your encouragement and support. And I look forward to answering your questions.

[The prepared statement of General Robbins can be found in the Appendix on page 515.]

Mr. HEFLEY. Thank you very much. Who is next up on the docket?

STATEMENT OF BRIG. GEN. DAVID A. BRUBAKER, DEPUTY DIRECTOR, AIR NATIONAL GUARD

General BRUBAKER. Okay. I am Dave Brubaker, Deputy Director of the Air National Guard. My boss, General Danny James sends his regards to Mr. Ortiz.

It is a pleasure to be here. I am representing 107,000 members of the Air National Guard fully employed on our country's defense all over the world. For fiscal year 2004, the President's budget request is \$60 million for the Air National Guard MILCON. This in-

cludes 3 projects totaling almost \$20 million to support new mission requirements at Sioux City, Gateway Airport, Iowa, Camp Shelby, Mississippi and a force realignment project at Buckley Air Force Base, Colorado.

The program also includes one current mission project totaling \$19 million at Quonset State, Rhode Island. The remaining \$22 million is for planning and design and unspecified minor construction. These funds are needed to complete design of the fiscal year 2005 construction program and to start design of our fiscal year 2006 program.

The unspecified minor construction program is our primary means of funding small, unforeseen projects that cannot wait for normal MILCON. This year, that funding was critical and helped us respond to anti-terrorism force protection requirements.

As a former unit commander, I am aware of the importance of facilities that are functional and attractive. I am here today to ask for this committee's support to help fight against new threats, both at home and abroad. But, as new mission bed downs become increasingly critical to our nation's defense, we must not forget about our existing infrastructure.

In closing, I would like to thank you again, members of this committee, for your continued and unwavering support. We are confident that the men and women of the Air National Guard will always meet the challenges set before them. And with your help, will remain an important part of the American military character as an air expeditionary force, domestic guardian and caring neighbor protecting the United States of America at home and abroad. Thank you.

[The prepared statement of General Brubaker can be found in the Appendix on page 515.]

Mr. ORTIZ. Thank you, General. I would also like to second the chairman's recognition, General Robbins. We wish you the best. We appreciate your loyalty and your commitment to our country. They say there is more money on the outside. So we wish you the best.

General ROBBINS. Thank you, sir. I appreciate that sentiment.

Mr. ORTIZ. General Rajczak.

STATEMENT OF BRIG. GEN. WILLIAM A RAJCZAK, DEPUTY TO THE CHIEF OF AIR FORCE RESERVE

General RAJCZAK. Thank you.

Mr. Chairman and distinguished members of the committee, I appreciate the opportunity to appear today to discuss the Air Force fiscal year 2004 military construction budget request. On behalf of over 75,000 Air Force Reserve members at home and abroad, thank you for your continued interest in support of our military construction program and facilities and infrastructure modernization.

As you know, Air Force Reserve military construction priorities are considered together with those of the active Air Force and the Air National Guard to produce an integrated MILCON program. This integrated program reflects a diligent effort on the part of the Air Force to present the best possible budget request. Our challenge is to balance readiness, transformation, recapitalization and infrastructure. The program we are presenting today represents our continuing commitment to the total force policy.

In fiscal year 2004, we will continue the bed down plan for the KC-135R tankers at Portland International Airport that began this fiscal year. This mission changed from our currently assigned HC-130 aircraft and HH-60 helicopters as driven by the need for additional active duty combat search and rescues assets worldwide.

Our fiscal year 2004 MILCON request includes three projects totaling \$10.2 million to support the new mission. Related projects include modernization of existing maintenance facilities, construction of a fire station and completion of a ground refueling system.

At Andrews Air Force Base, KC-135R tankers will replace retiring C-141 aircraft. Once again, mission change is driving related MILCON project requirements totaling \$9 million. These projects include altering the existing maintenance shops, upgrading pavements and adding a hydro-refueling system so that refueling can be accomplished more efficiently without the need for fuel trucks.

The budget request also includes an aircraft fuel cell maintenance hangar for our C-130Js at Keesler Air Force Base in Mississippi. This is the only current mission requirement project.

Our Air Force Reserve mission and people deserve the very best facilities we can provide. I sincerely thank you for your interest, for your continued support, and your assistance as we both seek the goal of facilities excellence. Thank you.

[The prepared statement of General Rajczak can be found in the Appendix on page 515.]

Mr. HEFLEY. Thank you very much.

Mr. Ortiz.

Mr. ORTIZ. Mr. Chairman, for some reason, we would like to go back to base closures. You know, Mr. Secretary, we hear so many rumors. And the worst thing about rumors is that sometimes they become true.

Secretary GIBBS. True.

Mr. ORTIZ. I understand that the rumor mill has it that we might be pulling out of Korea, maybe not now, but in the next few years. And the same thing about maybe pulling out of Germany. There have been some reports about maybe going to Bulgaria, Romania or someplace else. So, I think that the base closure for the year 2005, in my opinion, is a little premature.

We need to know exactly what is going to happen after we finish this war because when we do—I know in some areas, we might have excess capacity. But, if this was to happen, we are going to have to get those troops back from either Korea or Germany or Italy or anyplace else, where do we put them? And maybe you can help me a little bit as to—

Secretary GIBBS. That is a very broad question. Let me go back to the first part, the rumor mill. You must be tuned into one that I am tuned into also because I hear some of the very same rumors.

What I do know and I believe to be fact because I listened to Mr. Dubois testify to it a day or two ago when we were before another panel together, is that there is a review being accomplished by the combatant commanders in each of the areas as to what they believe should be their force structure in each of their particular areas.

Based on that, there is a review that is currently underway of the facilities and projects that were requested both in 2003, that have already been authorized and appropriated, and those that are

in the request in 2004. He responded to a question in a Senate hearing that he expected that the DOD would present any recommendations in those areas before the 2004 MILCON bill is marked. So, I think you should expect those within four to six weeks, no longer than that.

In terms of the comment about bringing the troops home, and where we would put them, I could not answer that question today. But, I will promise you that as we go through the process for the BRAC 2005 round, that that will be fully considered. I personally believe that the resolution of the overseas basing will be accomplished sometime during this calendar year in sufficient time and in advance of going into the detailed domestic BRAC round and that we will have very reasonable information for which to base the 2005 BRAC round.

Mr. ORTIZ. Thank you, Mr. Secretary. And thank you so much for all of you being with us today.

Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Snyder.

Dr. SNYDER. Thank you, Mr. Chairman. I cannot remember if it was General Robbins or you, Mr. Secretary. But one of you made a comment in your written statement about fitness centers. Was that you, General Robbins?

General ROBBINS. Yes, sir.

Dr. SNYDER. Do you have any—I did not see it in your statement—comment about the overall need in the system for child care centers?

General ROBBINS. Yes, sir. There is a shortage of space for dependent children across the Air Force. Our Air Force services organization who manages that program, the last number they had was about 8,800 spaces short. As you know, there was a Child Development Center (CDC) plan that was developed, submitted, I believe, maybe two years ago to the Hill, one or two years ago.

In 2004, we have one project in the program. It is at Mildenhall. We are putting the money against them in a priority order, if you will, where the need is the greatest, the requirements for children spaces is the highest. Across the future years defense plan (FYDP), I do not have the exact number. We have a plan that goes out over the next six, seven years, five years, six years that will address down that priority list and address the 8,800 shortage.

Dr. SNYDER. Mr. Secretary, I want to ask one question about BRAC which I have supported in the past. The chairman and several of us have had discussion now for several years about the advisability of having some kind of list of bases that are not going to be closed. But I have wondered as time has gone on if that complicates the realignment portion, the R portion of it.

How would that work?

If you were to come out with a list that said Norfolk—we have heard mention that Norfolk is never going to close. I have never been to Norfolk so I do not know what is there. And yet, would this process potentially say oh, there is a mission at Norfolk which would be better at an Air Force base because we think it would be closer to the transport planes. It may save us a couple, three hours. I mean, would we set communities up for problems in the realign-

ment portion of it, even those that we may think would never close? Or am I off base there?

Secretary GIBBS. No, I would not say that you are off base. That is one of the considerations that leads the Air Force and the Department of Defense to be hesitant about identifying specific—making a preconceived determination as to what should happen at a specific place. The law, you know, is very specific in the process that has to be followed by the Department of Defense and in the sequence of the events that have to occur.

The principal activity that is occurring this year is the development of the force structure plan going out 20 years, a very difficult task. It is dependent upon the strategy and the expectation of where the world is going to be 20 years from now. That is the first part of the process that is occurring. That is being done principally by the uniformed service people in the planning aspects and at the highest levels of the military.

At the same time, in a combination between some of the civilian leadership and the military leadership, we are developing the criteria which will be used to make the determinations to do both closures and realignments. And again, there is a specific listing of how, the sequence of what should be considered in making those determinations.

The first and foremost is military necessity. And then the waterfall goes on down, it eventually gets to economics and other things, economics of the community, economics to the Federal Government. We will be, again by law, publishing in December of this year, the criteria that will be used, it will be published in the federal record in the standard process for comment period, the 60-day comment period. It will be delivered to both Houses of the Congress. The President, with his budget message for 2005, is required to present to the Congress, the force structure along with the certification from the Secretary of Defense that he still considers a BRAC round to be necessary with positive economic results.

There will be plenty of time, and I certainly expect I will be talking with you during that comment period and before for the criteria, which is to become final by mid March. It is really at that point in time we will have the force structure, we will have the criteria, and then we will really begin the process of making the determination of, first off, how do we cite the force structure. And then the secondary determination, what would need to be realigned, or what will need to be closed.

Mr. HEFLEY. Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman, Mr. Ortiz, Mr. Secretary and generals. I am going to request some information about our major bases in the territory of Guam. I asked this question earlier of the Navy. And the secretary said that all repairs of the damage sustained by a recent super typhoon called Pongsona have been completed.

However, in further investigation, I understand that the repairs for the bases are ongoing but not completed. The bases currently, Mr. Secretary or the generals, whichever would like to answer are using funds from other accounts. And they are wondering if they are going to be reimbursed.

I am just wondering if there is any information that the Air Force has received from their own big base on Guam, Anderson Air Force Base, whether these funds are going to be reimbursed. Because certainly the bases will need the funds from other accounts for operational expenses. With the increased activity on Guam, you know, with the war in Iraq now, I was wondering just exactly where this money is going to come from.

Secretary GIBBS. In response to your first question about the repairs relative to the typhoon that hit, you are correct. The repairs are ongoing. But, they have proceeded to the point that Anderson Air Force Base is fully functional and can accomplish the missions that have been historically assigned to it and the additional missions that have been sent there recently.

In terms of the more specific questions, I will let General Robbins comment.

General ROBBINS. Yes, ma'am. Reflecting on what Mr. Johnson said earlier, the Air Force has divided the requirement for the storm damage repair into two components. One was——

Ms. BORDALLO. The storm itself?

General ROBBINS [continuing]. What I will refer to kind of as big ticket items. And you are familiar with the hangars there?

Ms. BORDALLO. Yes.

General ROBBINS. There is only one of the three hangars that is still fully functional. The other two are partially used, but certainly nowhere near what they were. So we have about \$54 million that we have identified that we need. It will be in the form of military construction to reconstruct the hangars at Anderson. The one is okay. But the other two, we need to do something about either replacing them with one bigger hangar or replace both. So it will cost about \$54 million.

The second part is about \$64 million. That is for all different kinds of requirements ranging from communications equipment to generators. That would be equipment money. Real property, maintenance and repair, again, that is about \$62 million. We are approaching those two independently, if you will.

We are working with OSD to source the \$53.7, the \$54 million for the military construction portion and hope to resolve that rather quickly. The base is doing exactly as you said and as Mr. Gibbs referred to, what we refer to as cash flowing the work arounds for the maintenance and the repairs so that they can operate. But we still recognize that there is about a \$62 million requirement in O&M funds that we need to find to address all those other things. Some of it was family housing. And again, it was generators. It was siding off of buildings, some utility systems and those kinds of things.

Ms. BORDALLO. Yes.

General ROBBINS. So, the immediate requirement, about \$53, \$54 million. We are working very hard to source that very quickly. The remaining \$61, \$62 million in O&M funds, we will work within the administration to resolve that.

Ms. BORDALLO. Is the second amount included in future, for example, the hardening the utilities and that type of thing?

General ROBBINS. Yes.

Ms. BORDALLO. Is included in the \$62 million?

General ROBBINS. That would be part of that. That is correct.

Ms. BORDALLO. So it is divided into two?

General ROBBINS. That is correct.

Ms. BORDALLO. And at this time, General, have the funds been requested? Are they—

General ROBBINS. We have requested the first part, the roughly \$54 million that would repair the hangar in particular.

Ms. BORDALLO. Yes.

General ROBBINS. And the second part, we have identified the requirement to OSD. But as you noted earlier, there are a lot of competing requirements going on right now for O&M dollars. And the Air Force is, as I said earlier, cash flowing many different programs—

Ms. BORDALLO. Yes.

General ROBBINS [continuing]. So that we can fight the war. I have no doubt that we will fix Anderson. As you know, Anderson is very important to us. It has a lot of potential.

Ms. BORDALLO. Anderson Air Force Base is a very beautiful base. It is probably one of the most attractive bases in the Pacific area. And right now, with the increased military activity there, it is very busy. And so, they are very concerned. We are concerned on Guam about these funds. I thank you very much, General, for making it much clearer to me exactly where we are.

General ROBBINS. Yes, ma'am.

Ms. BORDALLO. Thank you.

Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman.

General Robbins, I would like to take the opportunity to thank you for your service. We have had the opportunity to travel together overseas and most specifically, the Mid East. The work that you and your colleagues did at United Arab Emirates and Qatar is remarkable and should be commended. And I know you are very proud of that. I certainly wish you well in the future.

General ROBBINS. Thank you very much.

Mr. CALVERT. General Rajczak, I hope I am pronouncing your name correctly. Obviously you are very familiar with March Air Force Base.

General RAJCZAK. Sure.

Mr. CALVERT. Thank you, the Air Force, for recognizing the great job that the Air Reserve is doing and the National Guard. We could not provide the mission and do the job that we are doing without the Reserve and the Guard. And by allowing them to have the new aircraft, the C-17s to replace the 141s, I think, is the right thing to do.

We want to make sure that it is done properly. And certainly at March, we are bedding down eight C-17s here in the next few years. We want to make sure that it is done properly especially since these up tempo rates are high, a lot of things are going on. Are you comfortable with the fact that the money is being expended soon enough to make sure that these are done properly? And also, if there is any additional buys to go to the say, 12 C-17s at March Air Force Base in the future?

General RAJCZAK. Yes, sir. The majority of the funding for the facility upgrades that will be required at March in support of the C-17s are in the fiscal year 2003 current year funding. And that will allow them to come on board in about the 2005 time frame which will coincide with the C-17s coming on board at the last quarter of 2005 and the first quarter of 2006. And should there be additional aircraft, the capability exists for those additional aircraft to be supported.

We are also looking for the availability or the additional funding required to put in place an automated training system also known as a simulator so that we have that capability available at March Air Base.

Mr. CALVERT. That was the—

General RAJCZAK. Your support of that.

Mr. CALVERT. Absolutely. That is important. As you know, a lot of folks have to fly. You know, more pilots are in southern California than anywhere else. And it makes it much better for them if they can stay in southern California rather than have to fly elsewhere to do that training.

General RAJCZAK. Yes, sir.

Mr. CALVERT. So, that is great. One other issue that I wanted to bring up. And maybe the secretary, General Robbins, others can answer this question. There is \$200 million in the budget to support base closure and realignment activities for the Air Force in 2004. I would hope that you could use part of that money to look at published predictions of previous BRAC actions and what actually did occur.

If my memory serves me correct, when March Air Force Base was realigned, the number that was used in the cost of base realignment action (Cobra) model to expand Travis Air Force Base to accept the additional aircraft, I believe that number was \$100 million. You know, and certainly I wish Travis well, but I am wondering what that number actually ended up being. And how that would have plugged into the COBRA model or into these predictions and how we go about base closure and base realignment in the future. As a matter of the record, do we know how much money we spent at Travis in the last number of years to reconstruct Travis to accept additional aircraft?

Secretary GIBBS. Well, I do not know the number.

General ROBBINS. No, sir.

Secretary GIBBS. How about for the record?

General ROBBINS. I will take that for the record.

[The information referred to can be found in the Appendix beginning on page 541.]

Mr. CALVERT. Do you think it was more than \$100 million?

Secretary GIBBS. I really have no idea.

Mr. CALVERT. This is just taking a look at that one example, but I suspect that some of these predictions that were made about savings were not there. I hope we can take a better look at these numbers as we move down this process. We in the Congress need accurate numbers along with the BRAC commissioners.

Secretary GIBBS. There are actually—I am aware of two activities that are currently being done. We in the Air Force are doing one that talks about lessons learned and going back through and

reevaluating what was or was not accomplished in each of the four previous rounds of BRAC.

Also, the Department of Defense under the integrated process team that is looking at cross and joint service usage is also doing evaluation both of how things were done in the previous BRACs, but also the model to ensure that it does the best job that it can. So we are trying to do those kinds of things.

Mr. CALVERT. I appreciate it. As an old business guy, obviously we would like to get payback on these if we are going to go through this painful process, it should make sense. And I suspect—and I think the chairman may agree with me, in many cases it did not make sense. So hopefully if it is done—

Secretary GIBBS. Unfortunately we will not be pressured and get everything exactly right, nor did they in the past. I think if you look at the aggregate of the previous BRAC rounds, the summation of them has had a positive effect, both on the military and on the economy.

Mr. CALVERT. Thank, Mr. Chairman.

Mr. HEFLEY. Mr. Taylor.

Mr. TAYLOR. Mr. Gibbs, I noticed with great interest—and again, I want to thank all of you gentlemen for your service to our country. Thank you for being here.

I noticed with great interest your deficit of 11,400 rooms, dormitory rooms, another 3,700 inadequate rooms. I saw where you had budgeted, I believe, a little over \$200 million towards that end. Is it your expectation to do the same thing next year? Because I am not so sure that gets you to your billion dollar budget by fiscal year 2007 at that rate.

Secretary GIBBS. The billion dollar dormitory plan expands beyond just the elimination of the shortage of dorm rooms and the inadequate. There is a billion dollar plan. We intend to get back into a process whereby we are replacing dormitories as they are necessary. We just refer to it within the Air Force to show that that is the kind of commitment that we are making into dormitories. And that it is a long-term plan. It is not something we are going to turn on and off year by year.

So what we have included in the FYDP, in the five year look ahead, is a billion dollars for dormitories. So it will be approximately \$200 million a year give or take some depending upon individual projects.

Mr. TAYLOR. I am just curious. I think it is only fair that I ask you the same question that the undersecretary of the Navy received. I keep hearing about this excess capacity. Yet, the guys who in one paragraph tell me there is excess capacity, when given the opportunity to name that installation or installations, they fail to name one of them. Can you name one base that you consider to be excess in the United States Air Force?

Secretary GIBBS. No.

Mr. TAYLOR. Well, why is it the Administration keeps telling us they have excess capacity, sir.

Secretary GIBBS. Because I am not so sure that if I attempted to name a base I would not be violating a BRAC law. Because it tells me that I must identify the force structure through 2020. I must have a documented set of criteria about how that will be ap-

plied. And then I must apply military necessity before that. And at this point, I cannot do any of the three.

Mr. TAYLOR. I am mostly hearing about the savings. And I have to admit that I am a disbeliever on the claims of the savings. So I will give you an opportunity. Can you name one weapons system that has been purchased with BRAC savings?

Secretary GIBBS. I cannot do that mainly because coming from a financial background, I look at cash as being fungible and that there is not a direct relationship between cash in and cash out. And I am not aware of any from a budgetary perspective that were specifically identified to be used for that purpose. So I cannot.

But I do believe that the studies that have been done both by the Administration and also by the General Accounting Office (GAO) that in fact there has been, either depending upon how you would want to divide it, either in net savings or a cost avoidance that has occurred because of the previous rounds of BRAC.

Mr. TAYLOR. Is it your plan—as in previous BRACs, one of the surprises to the local communities was to the military retiree community. The studies I have done indicate that about half of our nation's military retirees choose to retire in the immediate vicinity of a military installation. They were less than pleased to find out that when the installation closed so did the hospital, so did the commissary, which was in many instances the major reason they chose to retire there. Is it your intention to close the hospital and the commissaries if the bases close again this time? Or will that be done differently this time?

Secretary GIBBS. I would have to split that into two different pieces. In terms of the hospitals, the determination has been—at least the preliminary determination has been made that medical facilities will be looked at from a joint process. So in fact, all of the medical facilities for all of the services will be looked at in combination in terms of again, identifying the military necessity and the location for them.

I am certainly not familiar with whether any specific decisions have been made to the level that you are talking about in terms of specific items. I would sincerely doubt that anything has been done since that process really just got started about three or four weeks ago.

In terms of the commissary and post exchange (PX), if a facility is closed, I do not think that there would be under the military necessity definition—I am hypothesizing now, but I currently could not see how we would keep a commissary or a PX open.

Mr. TAYLOR. Well, may I give you the opportunity to correct me? Do you know of a single instance when a base was closed and the hospital remained open? Because I am not aware of any. I will give you an opportunity to correct me if I am wrong.

Secretary GIBBS. I am not. No, I am not aware of any at this point.

Mr. TAYLOR. Anyone else on the panel? Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Rodriguez.

Mr. RODRIGUEZ. Thank you very much. Secretary Gibbs, let me first of all thank you for once again meeting with the San Antonio delegation when they came up. I want to thank you because I know

you are busy, and you took the time to meet with them. Thank you for being forthcoming. I think it has already made a big difference. And I want to thank you for that.

I kind of hate to follow Gene Taylor because he is talking about excess capacity. But I want to ask you about Kelly Air Force Base which we did close down. And I need to clarify how this sounds because it sounds—we have some Air Force organizations that are still at Kelly. And this sounds kind of bad, but I wonder when they are going to be leaving since we did close the base.

Although, as you well know, you tell me. We are still looking for missions for Lackland and Randolph and Brooks, okay? But at Kelly, we do have some—and we want to see when they are going to be moving to Lackland since the base was closed some time ago.

Secretary GIBBS. I do not have the details on the plan for the move over. I know there is a plan. I will take that for the record and get back to you and tell you what the anticipated movement is for those activities over onto the Lackland side.

Mr. RODRIGUEZ. I want you to take that with you because I am ready to take any other mission at any of the three bases. Okay? And I think Congressman Taylor was asking if there was any hospital that remained open. I think ours remained open there in San Antonio after the closure at Kelly. Thank you.

[The information referred to can be found in the Appendix beginning on page 541.]

Mr. HEFLEY. Mr. Cole.

Mr. COLE. Thank you, Mr. Chairman. Before I get to my questions, let me make a quick point of personal privilege because I know you share my passion for University of Oklahoma athletics. We are ahead 35 to 16 right now according to my blackberry. So I will keep you posted as we report—

Mr. HEFLEY. Can we have a moment of silence in recognition of that?

Mr. COLE. Well, I just wanted you to be aware of that. I knew you would have an interest.

Gentlemen, if I may, I want to ask a couple of questions again, relating to the BRAC process. Mr. Secretary, I understand your difficulty and challenge when you are asked to name specific installations. That is a tough spot to be in. Can you speculate a little bit even though we are very early in the process as to categories of facilities and bases, types of bases, if you will, where you anticipate there might be the need for reductions and realignments?

Secretary GIBBS. No. Really, as I said earlier, we are not far enough along in the process to begin to even be thinking about those kinds of things. It really is very important that the military necessity piece and the force structure be done first.

The facility should not be driving how the military is forced to determine what its force posture is. The force posture must be converse. So we are working, we are really working very hard to make sure that those kinds of things are not talked about until the other part is—

Mr. COLE. I understand, and I accept that, I certainly do. And that is the appropriate order of procedures you should address these things. But as you can understand, I think as the chairman

mentioned in his remarks to an earlier panel, there is always a great deal of anxiety about this.

There is a great deal of upheaval in communities that frankly and very logically are unlikely to face a difficult time. So, as quickly as you can get that information out there in whatever form or fashion, you know, it would be extraordinarily helpful, I think, to many of us.

Let me ask you this. There are clearly a lot of environmental costs or have been in previous rounds of BRAC. Can you tell me whether or not the costs associated with that have eaten into your military construction budget at all over the years?

Secretary GIBBS. I could not cite specifics, but I can give you a general evaluation of the overall observation. The Air Force is spending close to a billion dollars a year on its active installations for things related to the environment—general terms and definition. In terms of the BRAC aspect, we are spending in this coming year, the current request is about \$170 million. So relatively, the active program is much larger than the BRAC basis. So intuitively I would not say that it has had a direct affect on that.

Mr. COLE. Obviously you are in a BRAC situation now, has that impacted the request that you are making this year and in subsequent? In other words, are you delaying things in anticipation of that process?

Secretary GIBBS. No. Again there, the way the Air Force does its prioritization of military construction, it is a ground up determination. The projects are identified at local bases. They come up through the structure, through the major commands. They then come into the civil engineering group. There is a panel of people, both civil engineers and others, both civilian and military that go through and do the prioritization. And believe me, none of these people are thinking about BRAC at all.

Mr. COLE. So literally, the fact that you would anticipate that we might close some installations plays no role in the requests that come forward for additional construction?

Secretary GIBBS. None.

Mr. COLE. Do you have any concern that if we do close a facility it will be after we have constructed something fairly substantial at it?

Secretary GIBBS. That is quite possible. But in the waterfall of the criteria that we will go through in making the determination, we have to certify in the end that it has a positive economic affect. So again, in the aggregate, it will be positive, or it will not be put forward economically.

And it is quite possible—I would say even more than that—it is probable that we will have built some facilities that are relatively in very good shape that may not be useful to us as we go forward even in the process of a realignment, even if a base is not closed. But you cannot stop. You cannot stop for two or three years. So it is the continuation. We are in a continuum. And it is the process of coming into it at some point in time. And that is how it was inefficient.

Mr. COLE. Well, that is certainly one of my concerns in terms of moving through the process. Let me make a quick observation and then I will yield back the balance of my time, Mr. Chairman.

First of all, thank you, gentlemen, very much for what you do each and every day. You do a superb job. In fact, sometimes I think you are almost too good at what you do and I think you probably stretch dollars a lot further than is generally recognized. And as I look at your requests, and I think probably most members in this committee would share this opinion, we think you are underfunding yourself and you have for a number of years.

That is a tribute to your skill and your ability. We would just ask you not to stretch the rubber band too far because the further we get behind if we are indeed behind on these sort of things, the more difficult it is at a particular moment to catch up in time. So, you know, please look at these things pretty carefully. And, you know, again I recognize you work through an organizational chain. But I would hope, too, you are always free with this committee in terms of some of the decisions to be made because the authorizing authority is Congress. And it is helpful to have the options in front of you and not to have a sort of predesigned package that it is very difficult to ask tough questions on. And I do not suggest that any of you gentlemen would do that. But I would just ask you to guard against that danger.

Secretary GIBBS. We certainly will.

Mr. COLE. Thank you. And thank you very much, Mr. Chairman.

Mr. HEFLEY. Thank you. You are still planning to close Tinker Air Force Base, aren't you, in Oklahoma City?

Mr. COLE. I was artfully trying to get at the depot question, actually, through my category question.

Mr. HEFLEY. I thought you were.

Mr. COLE. But I figured they would see me coming.

Mr. HEFLEY. Mr. Abercrombie.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

Gentlemen, you simply cannot escape this issue of the BRAC. Now we can be dismissed. Every member in this committee from the chairman on down can be dismissed if you want for saying—and you would not be the first, I do not mean you personally, but one would not be the first—well, they have all got parochial views. They are all trying to defend themselves from their constituencies and so on. And the answer to that would be of course they are. And of course we are. Perfectly legitimately.

The presumption is that regardless of whatever regional or parochial designations might have been made for bases over historic periods of time, nonetheless, whether one site was chosen over another for political reasons, those sites all have activities taking place that are associated with the defense of this nation in meeting its strategic interests.

Presumably, at some point historically, someone could have made a logical case, a detached case, that a base should have been 400 miles this way or 600 miles that way or all those kinds of things, that the geography could have changed around.

But regardless of that and its accuracy or inaccuracy or the merits or demerits of the political arguments, nonetheless what takes place at those bases, I am sure you would all agree, is vital to the interests of the service involved and that the people conducting the business there on those bases and sites are doing so to the best of

their professional ability and will continue to do so regardless of where they are.

So if we can have, Mr. Chairman, as a premise that the activities at these bases are needed, whether they are needed there or whether they may be put in some other context is a separate question. So I think it is legitimate at this stage for this committee to be asking questions like what bases are not going to be—oh, I am not going to say allowed. But surely recommendations come from everybody. What bases are not going to be shut down? What bases have the highest recommendation for not being shut down?

No, I am not going to ask that because I know you are not going to give me an answer. Not because you are trying to be churlish or obstreperous about it, but because you are not allowed. Here is the difficulty. And Mr. Chairman, I want this on the record. We are being asked nonetheless to approve a whole series of recommendations here for expenditures for military construction. Most of which we expect to get underway within the next year because that is pretty much—I know Mr. Hefley pretty well. He is not going to put down or recommend for appropriations based on authorizations those things which he does not think are going to get underway again for reasons having to do with constituencies among other things. There is a political element to this for sure. You want people working in your district. You want jobs to come out of it. You do not want to put something down in the abstract.

Therefore, having that in mind, I have a serious question then to ask you. If you look at the BRAC time line—okay? And I hope I have established the premise that I am not going to argue with you about whether we are supposed to have it or not have it.

But I am going to argue to you that we are expected to make decisions on MILCON based on your recommendations here, MILCON recommendations, which at least the way the House is working now, Mr. Chairman, the Appropriations Committee tries to work with us on it. The BRAC time line I have here shows that by April of 2004, approximately a year from now that the GAO reports on analysis of the Secretary's force structure plans, infrastructure inventories, analysis of the two products and certification of the need for BRAC.

Then according to my paper here, Mr. Chairman, we wait until March 15th the following year for the President to submit names of the commissioners to the Senate. Would you be in favor, based on what you have testified here today as well as in previous time, of moving up this date? I do not even see why we have to go to 2004 April.

But let's just stick with that. Why can't the President name the commissioners in April of 2004 when the certification of the need for BRAC takes place? And then over the next five months, because this will not be done in a vacuum, we get the recommendation to come in here. What if we change the date to October of 2004?

Secretary GIBBS. What it would require would be a compression of the time for the completion of the gathering of the data to be analyzed against the criteria that is set. The criteria will not be set until mid March of 2004.

Mr. ABERCROMBIE. Time out. Excuse me. I understand. This is not our first time around.

Secretary GIBBS. No.

Mr. ABERCROMBIE. It is not as if we are in virgin territory here. This is what? The third, fourth?

Secretary GIBBS. Fifth.

Mr. ABERCROMBIE. And presumably we have gone through these other rounds. It is very difficult for me to see. Now, if the political reason—I have just cited that I understand what my political reasons are. If the political reason here is to take it past the election in November, 2004, I can understand that. But I do not think it is fair for us to be seen as parochial and having political reasons when that clearly to me is political to avoid having to take the responsibility for the recommendations.

I think if it is real—and this is my bottom line point, Mr. Chairman. If you really believe—again, not you personally. But if the Department really believes that this is something that is in the national interest and something that should be done and is in all the services' interest, it seems to me nothing less than—I will not say cynical. But it certainly is politically convenient to push it past the 2004 election.

If you believe it, and you believe in this process, then put it out there before the election, and we will all have to stand or fall or whatever is involved. That is my suggestion. If the Secretary wants credibility with at least this member of this committee, come back and let's get this process done before the election in 2004, and we will all take our political chances. Aren't you happy to have these suggestions that make your life easier?

Secretary GIBBS. Obviously if the Congress were to change the time line, we would change to comply with it. I mean, it was the Congress that set the time line.

Mr. ABERCROMBIE. Fair enough. Do you suppose you could relay to the Secretary my thoughts on this and that perhaps he might get back to the chairman about the efficacy of picking October of 2004 to make the decision? And then we can put legislation forward to try and see that that day comes about?

Secretary GIBBS. Quite honestly, I do not think the Secretary would take my call.

Mr. ABERCROMBIE. Okay.

Mr. HEFLEY. Thank you, Mr. Abercrombie. Thank you, gentlemen. We appreciate your testimony.

General Robbins, again we are going to miss you. We have enjoyed having you over these last few years to make the case. And you have done a very good job of it.

The committee stands adjourned.

[Whereupon, at 5:05 p.m., the subcommittee was adjourned.]

A P P E N D I X

MARCH 20, 2003

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 20, 2003

NOT FOR PUBLICATION UNTIL
RELEASED BY THE HOUSE
ARMED SERVICES COMMITTEE

STATEMENT OF
H. T. JOHNSON
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
BEFORE THE
READINESS SUBCOMMITTEE
OF THE
HOUSE ARMED SERVICES COMMITTEE
20 MARCH 2003

NOT FOR PUBLICATION UNTIL
RELEASED BY THE HOUSE
ARMED SERVICES COMMITTEE



ACTING SECRETARY OF THE NAVY

HANSFORD T. (H.T.) JOHNSON



Mr. Johnson was nominated on August 3, 2001 by President George W. Bush to serve as the Assistant Secretary of the Navy (Installations and Environment) and was sworn in on August 7, 2001. The President directed him to assume the duties as the Acting Secretary of the Navy on February 7, 2003.

The Secretary of the Navy leads the Department of the Navy consisting of 383,000 active duty and 88,000 Reserve Sailors; 175,000 active duty and 40,000 Reserve Marines; and 185,000 civilians. It includes 306 warships, 4,100 aircraft, and an annual budget of over \$110 billion.

Prior to his nomination to serve in the Bush-Cheney administration, Mr. Johnson served as Executive Vice President and Chief Operating Officer of the Credit Union National Association (CUNA) in Madison, Wisconsin. He also served as President & CEO of EG&G Technical Service and later of EG&G when purchased by The Carlyle Group.

Previously, Mr. Johnson joined USAA Capital Corporation, part of one of the largest and most successful financial services organizations in America. He was responsible for providing non insurance services to USAA members through the USAA Federal Savings Bank (selected as the Best Bank in America by Money Magazine), the USAA Investment Management Company, the USAA Real Estate Company, and USAA Buying Service. These companies managed \$13 billion in USAA insurance portfolios, over \$16 billion in mutual funds, a \$10 billion bank, and \$1 billion in real estate holdings. While at USAA, President George H. W. Bush appointed him to the 1993 Base Realignment and Closure Commission.

A native of Aiken, SC, he was the outstanding graduate in thermodynamics and aeronautics in the first class (1959) of the U. S. Air Force Academy. In 1989, he became the first graduate of the Air Force Academy to be promoted to General (four stars). Mr. Johnson additionally earned a Master's Degree in Aeronautics from Stanford and an MBA from Colorado. He furthered his military education at the U. S. Army Command and General Staff College, the National War College, and Advance Management Program at Dartmouth.

His early military service included a tour as a forward air controller in Viet Nam where he flew 423 combat missions followed by service as an assistant professor of Aeronautics at the Air Force Academy. After serving in Air Force Plans, he joined the Strategic Air Command and served as a Wing Commander and in SAC Plans.

From 1982 to 1985, he led the team that successfully rebalanced the Air Force programs in the \$100 billion annual Air Force Budget. Following that tour, he led Strategic Air Command operations in 1985 and directed the refueling and strategic reconnaissance forces during the bombing of Libya. He then became the Vice Commander in Chief of the Pacific Air Force.

In late 1987, he became the Deputy Commander in Chief of the Central Command during EARNEST WILL, the U. S. reflagging of Kuwaiti oil tankers and escort operations in the Persian Gulf. Following his tour in Central Command, Mr. Johnson served the Chairman of the Joint Chiefs of Staff as director of the Joint Staff.

As Commander in Chief of the U. S. Transportation and the Military Airlift Commands, Mr. Johnson worked directly for Secretary of Defense, Dick Cheney and Chairman of the Joint Chiefs, Colin Powell in leading all transportation components of the U. S. military. His Air Force command provided all airlift and special operations forces for the extremely effective JUST CAUSE invasion of Panama. From 1990 to 1991, his commands led all military and commercial aspects of the DESERT SHIELD/STORM movement of troops, equipment, and supplies to and from the Persian Gulf - the most concentrated movement in American military history.

Mr. Johnson remains active in community and church activities and he and his wife of 43 years, Linda, live in McLean, Virginia. They have a son, a daughter, and six grandchildren.

Mr. Chairman and members of the Committee, I am H.T. Johnson. While I have recently been designated as the Acting Secretary of the Navy, I am also the Assistant Secretary of the Navy (Installations and Environment), and it is in this latter capacity that I appear before you today to provide an overview of the Department of the Navy's shore infrastructure programs and environmental efforts.

FY-2004 Budget Overview

Before his recent departure to the Department of Homeland Security, Secretary of the Navy Gordon England articulated several overarching Department of Navy goals for the FY-2004 budget:

- Successfully prosecuting the global war on terrorism while sustaining our current readiness;
- Recapitalizing and transforming our Navy and Marine Corps to meet the challenges of the future;
- Fully networking our forces at sea and ashore to operate seamlessly in a joint environment;
- Continuing to invest in our Sailors and Marines; and
- Sustaining the quality of our operational training.

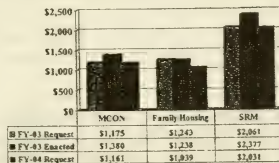
I believe the FY-2004 Department of Navy's budget request meets all of these goals and represents a successful balance between funds needed to operate, recapitalize and transform our fleet assets with funds needed to do the same for our shore installations. Allow me to provide you with an overview of our budget, with further details to follow later in this statement.

FY-2004 Budget Overview

Our FY-2004 Military Construction, Family Housing, and Sustainment, Restoration and Modernization (SRM) request of \$4.2 billion is \$764 million below the FY-2003 enacted amount, but generally on par with

our FY-2003 budget request. Looking at the individual components, the FY-2004 Military Construction, (MCON) Navy (active + reserve) request is a very robust \$1.16 billion, similar to the FY-2003 request. I note that the FY-2003 enacted

FY-2004 DoN FACILITIES (\$M)

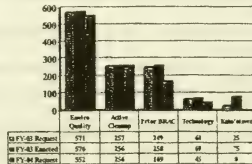


amount includes \$236M in one-time combating terrorism projects that were part of the FY-2003 Supplemental request. These projects met the criteria for military construction and were included in the FY-2003 MCON appropriation.

We have reduced our FY-2004 Family Housing, Navy request by 17 percent compared to the FY-2003 enacted amount. However, expanded use of our housing privatization authorities, and increases to the Basic Allowance for Housing (BAH), which makes housing in the community more affordable, allow us to still meet the Department of Defense goal of eliminating inadequate homes by FY 2007. Sustainment, Restoration and Modernization (SRM) funding¹ is down 15 percent compared to the enacted level, a reflection of overall affordability within the Secretary's priorities.

Our FY-2004 request for environmental programs totals \$1.0 billion, a reduction of about \$200 million from the FY-2003 enacted level. Much of the reduction is due to the completion of cleanup on the island of Kaho'olawe, a former Naval bombing range in Hawaii. Title X required the Navy to conduct a 10-year cleanup, which will end on 11 November 2003. We are working to transition full control of the island to the State of Hawaii.

FY-2004 DoN ENVIRONMENTAL (\$M)



The decline in Technology investments is due to the completion of environmental research to retrofit non-ozone depleting equipment. This equipment is now being installed on ships. Our must-fund environmental cleanup requirements for bases closed under the Bases Realignment and Closure rounds in 1988, 1991, 1993, 1995, which I will refer to as Prior BRAC², are less in FY-2004 than in FY-2003, while cleanup at active bases is unchanged from FY-2003.

Environmental Quality (EQ) includes funds for compliance with existing environmental standards, pollution prevention, and conservation of natural and historic resources on Navy and Marine Corps Bases. Approximately half of these

¹ Refers only to the Operations and Maintenance portion of SRM.

² Prior BRAC amounts shown in the graphic are only for environmental cost, and exclude \$12M in FY-2003 and \$11M in FY-2004 for caretaker costs. These caretaker costs are a portion of the Prior BRAC budget request. The FY-04 budget request includes \$68M in expected land sale revenue to be applied to cleanup Prior-BRAC locations.

funds are for routine functions such as personnel salaries, environmental permits and fees, environmental sampling and laboratory analyses, and hazardous waste disposal costs, while the rest are for one-time projects. The decline in environmental quality funds is due to the completion of one-time pollution prevention projects and a reduction in equipment purchases.

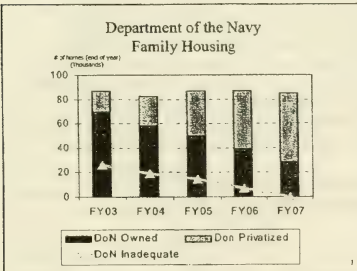
HOUSING

We have made a special effort in this budget to maintain progress on improving the quality of housing for our Sailors and Marines.

Family Housing

Our family housing strategy consists of a prioritized triad:

- Reliance on the Private Sector. In accordance with longstanding Department of Defense and DoN policy, we rely first on the local community to provide housing for our Sailors, Marines, and their families. Approximately three out of four Navy and Marine Corps families receive a Basic Allowance for Housing (BAH) and own or rent homes in the community. Our bases have housing referral offices to help newly arriving families find suitable homes in the community.
- Public/Private Ventures (PPVs). With the strong support from this Committee and others, we have successfully used statutory PPV authorities enacted in 1996 to partner with the private sector and meet our housing needs, in part, through the use of private sector capital. These authorities, which I like to think of in terms of public/private partnerships, allow us to leverage our own resources and provide better housing faster to our families.
- Military Construction. Military construction will continue to be used where PPV authorities don't apply (such as overseas), or where a business case analysis shows that a PPV project is not financially sound.



The Department remains on track to eliminate the inadequate family housing units we own by FY 2007, in large measure because we have increased our emphasis on privatization. We will be able to eliminate almost two-thirds of our inadequate inventory through the use of public/private ventures. As of 1 February, we have awarded eight projects totaling almost

6,600 units. During Fiscal Years 2003 and 2004, we plan to award projects

totaling over 17,000 homes at ten Navy and Marine Corps locations. This will allow us to improve our housing stock and provide more homes to Sailors, Marines and their families much faster than if we relied solely on traditional military construction.

Another important factor is the continuing initiative to improve the basic allowance for housing (BAH). With higher BAH, our members are finding suitable, affordable housing in the private sector. This, in turn, reduces the need for military housing, thus allowing us to divest ourselves of excess, inadequate units in our inventory.

Bachelor Housing

Our budget request of \$269 million for Bachelor Quarters construction projects continues the emphasis on improving living conditions for our unaccompanied Sailors and Marines. There are three challenges:

1. Provide Homes Ashore for our Shipboard Sailors. There are approximately 18,100 Sailors worldwide who are required to live aboard ship even while in homeport. This requirement is less than reported last year because of a recent change to Navy policy allowing unaccompanied E4s to live off base. This new policy is tied to the FY-2001 National Defense Authorization Act that authorized the payment of BAH to E4s without dependents who are assigned to sea duty. The Navy continues to project that it will be able to achieve its "homeport ashore" initiative by FY-2008 by housing two members per room. Our FY-2004 budget includes two "homeport ashore" projects. One represents the second increment of a Norfolk, VA project that will provide a total of 500 spaces. The second project would construct 500 spaces for shipboard Sailors at San Diego, CA.
2. Ensure our Barracks Meet Today's Standards for Privacy. We are continuing our efforts to construct new and modernize existing barracks to provide increased privacy to our single Sailors and Marines. The Navy applies the "1+1" standard for permanent party barracks. Under this standard, each single junior Sailor has his or her own sleeping area and shares a bathroom and common area with another member. To promote unit cohesion and team building, the Marine Corps was granted a waiver to adopt a "2+0" configuration where two junior Marines share a room with a bath. The Navy will achieve these barracks construction standards by FY-2013; the Marine Corps by FY-2012.
3. Eliminate gang heads. The Navy and Marine Corps remain on track to eliminate inadequate barracks with gang heads³ for permanent party

³ Gang heads remain acceptable for recruits and trainees.

personnel. The Navy will achieve this goal by FY-2007; the Marines by FY-2005.

We appreciate the support from the Congress in our efforts to extend the principles of privatization to our critical bachelor housing needs. We envision that privatization will prove to be as successful in accelerating improvements in living conditions for our single Sailors and Marines as it has been for family housing. We are developing pilot unaccompanied housing privatization projects for Hampton Roads, Camp Pendleton, and San Diego. We hope to be able to brief you on our concepts for these projects before the end of this fiscal year.

Military Construction Projects

In addition to the \$269 million in Bachelor Housing projects, our FY-2004 military construction program includes \$361 million in Operational and Training facilities such as waterfront and airfield projects, and \$44 million in compliance projects. There is \$32 million for counter-terrorism (CT) projects; additional CT costs are included as a portion of the total project where appropriate.

This budget includes \$473 million in "new footprint" projects, representing an unusually large 41 percent of the military construction program. While many barracks and CT projects are new-footprint, there are several other important projects that will support the transformation to new weapon systems of the future.

- o \$116 million to complete the purchase of the Blount Island facility and safety buffer in Jacksonville, Florida. Blount Island is the maintenance site for the Marine Corps' Maritime Pre-positioning Force. The purchase of this site, along with a surrounding safety buffer, will ensure the long-term viability of this strategic national asset.
- o \$28 million to support the first phase of an outlying field for East-Coast basing of the F/A-18 E/F Super Hornets. Selection of a specific basing of this aircraft is pending completion of an Environmental Impact Statement (EIS). The EIS is scheduled for completion this summer.
- o \$24 million to construct a Joint Strike Fighter test facility.
- o \$21 million to construct a facility to develop the next generation shipboard aircraft launching system to be used on the new aircraft carrier CVN21.

Facilities Sustainment, Restoration and Modernization (SRM)

The Department of Defense uses models to calculate life cycle facility maintenance and repair costs. These models use industry wide standard

SRM		
Navy		
	PB-03	FY-04
Sustainment (%)	84%	93%
Recap Rate (years)	116	140
Marine Corps		
	PB-03	FY-04
Sustainment (%)	Full	97%
Recap Rate (years)	156	88

costs for various types of buildings. Sustainment funds in the Operations and Maintenance accounts maintain shore facilities and infrastructure in good working order and preclude its premature degradation. Both the Navy and Marine Corps increased sustainment funding in FY-2004, with the Navy improving to ninety-three percent of the full sustainment requirement, and the Marine Corps staying at or very near the Department of Defense goal of full sustainment.

Restoration and Modernization provides for the major recapitalization of our facilities using Military Construction and Operations and Maintenance funds. While both the Navy and Marine Corps achieve the Department of Defense goal of a sixty-seven year recapitalization rate by FY-2008, one year later than expressed last year, the FY-2004 recap rate increases to one hundred forty years for Navy while improving to eighty-eight years for the Marine Corps. The Navy will manage the near term investment in facilities recapitalization to limit degradation of operational and quality of life facilities.

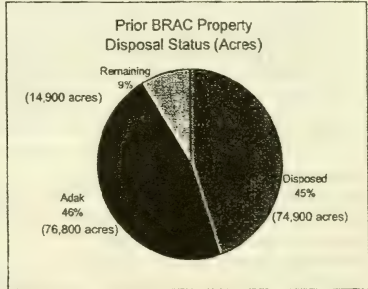
While additional funds would certainly improve the situation, it is unrealistic to believe that we will simply "buy" our way to attain these facility goals. We must seek and implement greater efficiency in our infrastructure

INFRASTRUCTURE EFFICIENCIES

Prior BRAC

The BRAC rounds of 1988, 1991, 1993 and 1995 have been a major tool in reducing our domestic base structure and generating savings. The Department closed and must dispose a total of ninety (90) bases, and has achieved a steady state savings of \$2.7 billion per year. All that remains is to complete the environmental cleanup, with an estimated cost of \$785 million, and property disposal.

We have completed disposal of sixty-four (64) bases to date; eight more bases are planned in FY-2003, five in FY-2004. Legislation was enacted last year that will allow the Navy to transfer nearly all of the former Naval Air Station Adak, Alaska to the Department of Interior, who will in turn exchange this property for other



wildlife refuge property owned by The Aleut Corporation. The United States will then retain title to wildlife refuge property previously designated for transfer to the Aleuts under the Alaska Native Claims Settlement Act. We are working the final details for the transfer and hope to complete the property exchange later this year. That transfer, along with the planned disposals this fiscal year, should leave us with less than 12,000 acres still to dispose.

I am proud of the hard work and innovation that the Navy and Marine Corps team have displayed in working with environmental regulators to expedite property cleanup and support local redevelopment efforts to speed reuse. Congress provided the necessary legislative authority to allow the Navy to pursue early transfer opportunities. With the concurrence of environmental regulators and the State Governor, we transfer the deed to the property while environmental cleanup continues, or pass mutually agreed cleanup funds to the developer who becomes responsible for doing the cleanup. We have used this authority many times, including the transfer of 1,300 acres at Mare Island Naval Shipyard last year.

The spirit of innovation continues. Taking a cue from the popular commercial uses of the Internet, we worked closely with General Services Administration (GSA) to use its web site to auction two hundred thirty-five (235) acres of highly desirable property at the former Marine Corps Air Station Tustin in California. We have deposited \$51 million from this sale, with settlement for the balance this spring. Existing statutes require that all BRAC leasing and land sale revenue be deposited into the Prior BRAC account to meet caretaker and environmental cleanup needs. We will increasingly rely on BRAC land sale revenue to accelerate the remaining BRAC cleanup efforts. I am very pleased with using the GSA web site to auction real estate. It can attract a very wide audience of potential bidders, ensure that the government receives the maximum value for the property, and can help the community quickly resolve reuse needs. We will pursue more BRAC property sales using the GSA web site.

BRAC 2005

The FY 2002 National Defense Authorization Act amended the 1990 Defense Base Closure and Realignment Act to authorize another round of BRAC in 2005. We will apply the BRAC process to examine and implement opportunities for greater joint use of facilities, thus eliminating excess physical capacity, and to integrate DoN infrastructure with defense strategy. Continuing to operate and maintain facilities we simply no longer need is unfair to the taxpayer and diverts resources that would be better applied to recapitalize the operating forces (ships, aircraft and equipment) for the future.

The BRAC statute sets out a very fair process.

- All bases are treated equally;
- All recommendations based on twenty year force structure plan, infrastructure inventory and published selection criteria;
- Published selection criteria must ensure that military value is the primary consideration and must address the following:
 - Preservation of training areas for maneuver by ground, naval, or air forces;
 - Preservation of military installations in the United States as staging areas for the use of the Armed Forces in homeland defense missions;
 - Preservation of military installations throughout a diversity of climate and terrain in the United States for training purposes;
 - Consider the impact on joint war fighting, training, and readiness,
 - Contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.
 - The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs;
 - The economic impact on existing communities in the vicinity of military installations;
 - The ability of both the existing and potential receiving communities' infrastructure to support forces, missions, and personnel;
 - The impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.
- All data certified as accurate and complete and provided to the Commission and Congress.

We are working closely with the Office of the Secretary of Defense and the other Military Departments to develop opportunities for joint basing that would further eliminate excess infrastructure among the Services.

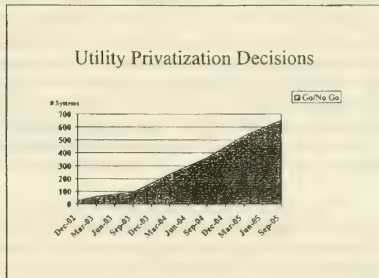
Commander, Navy Installation Command

The Navy will consolidate the management of its shore establishment on 1 October 2003 from eight installation claimants across sixteen (16) regional commanders to a single Navy Installation Command. This consolidation will achieve economies of scale, increase efficiency, and reduce headquarters staffs while also standardizing policies, procedures, and service levels across all Navy installations, much as the Marine Corps now enjoys. We estimate that the benefits of this streamlining will save the Navy \$1.6 billion over the FYDP.

There is still much work to be done to implement this change. The Navy must still define the personnel impacts, finalize the reporting relationships, and identify the appropriate funding transfers. I believe this effort will result in a more focused, leaner organization that will improve services to the Fleet.

Utility Privatization

We are proceeding with plans to privatize utility systems (water, wastewater, gas, electric) where it is economically feasible and does not pose a security threat. Utility privatization is an integral part of our efforts to improve our utility infrastructure. The Secretary of Defense issued new utility privatization guidance last fall that requires the Services to complete a source selection decision on each system by September 2005. We are on track to do so for the 662 Navy and Marine Corps systems under consideration for privatization.



Strategic Sourcing

Strategic sourcing uses commercial business practices such as process re-engineering, divestiture of non-core functions, elimination of obsolete services, and public/private competitions under Office of Management and Budget A-76 guidelines to improve efficiency. We expect to achieve \$1.6 billion in annual steady state savings in FY-2005 from strategic sourcing initiatives.

Our FY-2004 budget includes A-76 competitions for 2,000 positions. OMB has been trying to bring about much needed process changes for conducting these competitions. We will incorporate these process changes, as well as some of our own initiatives, to speed the process while still ensuring a fair playing field between in-house and private sector interests. We are also supporting the Secretary of Defense's Business Investment Council efforts to identify non-core functions for divestiture. The Navy has identified the manufacturing of eyewear for military personnel as a pioneer project for divestiture.

Naval Safety Program

Although safety is foremost a personnel program to avoid accidental human injury or death, the private sector has also recognized safety programs for

their contribution to the bottom line in avoiding damage to expensive equipment or facilities, inadvertent loss of highly skilled personnel, and long-term injury compensation costs. We have established a senior executive in my office, the first in Department of Defense, to help foster a new Naval safety vision for the future. A Safety Task Force has been meeting to consider the relationships between safety staffs and funding mechanisms. We have engaged Navy and Marine Corps installation commanders to recognize and work to reduce the incidence of civilian man-hours lost due to injury even as we participate in a Department of Defense-sponsored Employee Work Safety Demonstration project at four bases. We plan to provide basic Operational Risk Management training to all new Sailors and Marines, with more advanced training to senior personnel.

We are also pursuing safety improvements for the more visible aviation mishaps, for which past experience shows that 85 percent are in part attributable to human errors. We plan to try a new technique that would store critical flight performance data and allow the pilot to later replay a realistic animation of the flight.

ENVIRONMENTAL PROGRAMS

Shipboard Environmental

The U.S. Navy is a recognized world leader in environmental stewardship at sea. In recent years the Navy has completed installation of pulpers, shredders and plastic waste processors on its surface ships. This ensures no plastic discharge to the world's oceans and provides environmentally benign disposal of other solid wastes, such as food, paper, cardboard, metal and glass. The Navy expects to have its submarine fleet fully outfitted with solid waste equipment by the end of 2005, well in advance of the 31 December 2008 Act to Prevent Pollution from Ships deadline. Next year, the Navy will begin to upgrade the solid waste equipment in the surface fleet. These upgrades will mean shipboard personnel will expend less time, energy and resources in processing solid waste.

The Navy continues to convert shipboard air-conditioning and refrigeration plants to ones that use non-ozone depleting, environmentally friendly refrigerants. As of today, over 75% of the fleet is CFC-free. Additionally, the Navy continues to upgrade the fleet's ability to safely and effectively handle hazardous materials by installing pollution prevention equipment on all our surface ships. We continue to work with the Environmental Protection Agency to set Uniform National Discharge Standards for all Armed Forces vessels, and in developing best management practices for preparing vessels for use as artificial reefs. These programs, along with others in the shipboard environmental program, reap enormous environmental and public relations benefits while maintaining the primary goal of allowing our ships to

operate anywhere in the world in a manner that complies with or exceeds domestic and international environmental laws and agreements.

Cleanup Program at Active Bases

For the second year in a row, the number of cleanups completed at active bases exceeded the planning target. While we still have work to do, almost seventy (70) percent of all sites now have remedies in place or responses complete. At the end of FY-2002, 2,225 of the 3,668 sites at active installations have responses complete. We plan to continue this pace. By the end of FY-2004 we plan to have about 2,500 sites completed at active bases.

Vieques Cleanup

On January 10, 2003, the Secretary of the Navy signed the letter of certification to Congress confirming that the U.S. Navy and Marine Corps will cease military training on the Vieques Inner Range by May 1, 2003. The Department of the Navy has identified training alternatives that will collectively provide equivalent or superior training to the options provided on the island of Vieques. The law requires the Navy to transfer Vieques to the Department of Interior. We have been working with Interior and the Environmental Protection Agency to do so.

We plan to conduct munitions clearance and any necessary cleanup in accordance with applicable laws. The clearance and cleanup will be done in a manner that is consistent with land use designated in the governing statute and where appropriate, minimizes disturbance of the natural environment. The designated land uses, once transferred to the Department of Interior, are wilderness area for the live impact area and a wildlife refuge for the remaining portions. We will be considering the need for land use controls to ensure long-term protectiveness as part of the remedial actions, including consideration of future land use plans. We have identified \$2 million in FY-2004 funds from our Munitions Response Program line within the Environmental Restoration, Navy (ER, N) appropriation to begin munitions clearance efforts.

Environmental Range Management

The Navy and Marine Corps have initiated efforts to better understand and manage the environmental concerns on its ranges. The Navy has \$15.8 million in FY-2004 to begin this effort at the Southern California, Fallon, Key West, and Gulf of Mexico range complexes. This environmental program addresses three major areas:

- Conduct living marine resource assessments, including ocean surveys of marine mammal population densities;

- Assess groundwater, surface water, soils conditions, natural resources and the environmental compliance status for each of the complex's land-based ranges and associated airspace;
- Integrate this information into complex-wide environmental planning in accordance with the National Environmental Policy Act, which will in turn drive Navy range complex management plans.

LEGISLATIVE PROPOSALS

I would like to call your attention to several legislative proposals of particular importance to the Department of Navy.

Readiness & Range Preservation Initiative

I appreciate this committee and the Readiness Subcommittee of the Senate Armed Service Committee holding a hearing last week to find a reasonable balance between the national priorities of military readiness and environmental stewardship.

The changes that the Department of Defense propose in the Readiness and Range Preservation Initiative legislative proposal will enable us to slow new encroachment on ranges; ensure that sound science is the basis for evaluating the effect of military readiness activities on our natural resources; and provide flexibility in achieving workable solutions to control air pollution and the release of hazardous substances on open ranges.

The Department of the Navy has a stake in all aspects of this proposal, however modifications to the Endangered Species Act and the Marine Mammal Protection Act are the particular concern.

- Current litigation under the Endangered Species Act could result in 65 percent of Marine Corps Air Station Miramar and 56 percent of Marine Corps Base Camp Pendleton being declared critical habitat. If that happens, the primary mission for most of the land at both bases would become species recovery, not training young Marines to defend our national interests. The Department of Defense proposal would allow the military services to use Integrated Natural Resource Management Plans (INRMP), currently required under the Sikes Act, in lieu of critical habitat designation. INRMPs consider all the conservation needs on a particular base. They are coordinated with the Fish and Wildlife Service and state regulatory agencies, subject to public review under the National Environmental Policy Act, and have demonstrated the ability to support species recovery. The Department of Defense proposal would give us the flexibility to continue to train Marines, while continuing to protect endangered species.

- Current litigation under the Marine Mammal Protection Act has restricted the Navy's ability to deploy a new low-frequency active sonar system called SURTASS LFA that was developed to counter the threat of quiet diesel submarines deployed by our adversaries. A final hearing on the merits of the case is currently scheduled for June 2003. Before deploying the system, the Navy worked closely with the National Marine Fisheries Service. A scientific research program was prepared to minimize the potential injury to marine mammals. The study was subjected to an independent peer review and approved through a public rule making process. The Department of Defense proposal will focus analysis on biologically significant impacts, allow better application of the Marine Mammal Protection Act to a world-wide Navy, and provide a national defense exemption by the President when national security conditions warrant.

The Department of the Navy will continue to meet the environmental compliance standards that American industries and businesses face. These legislative proposals will restore balance where environmental requirements adversely affect uniquely military activities - activities that are necessary to prepare Sailors and Marines to engage in combat and win.

Property Conveyance for Housing

We propose to extend to barracks existing authority that allows the transfer of land at locations closed under prior year BRAC actions for family housing. The Administration's request also includes a similar proposal that would allow the Services to transfer land at locations not related to BRAC for either housing, land suitable for siting housing, cash, or some combination of these. These proposals would provide additional tools that we could use to obtain housing for our Sailors and Marines and their families faster.

MILCON Streamlining

We propose several initiatives to streamline the administrative aspects of the military construction process. It typically takes five to eight years from inception to completion for a military construction project. That's too long. Our proposal would increase the minor construction threshold to permit faster execution of smaller projects, and allow the use of the planning and design sub account to initiate early project design on design build projects. Such projects now include most of the design funds as part of the project cost, and thus must await line item authorization and appropriation of the project by the Congress to begin design work in earnest.

CONCLUSION

In conclusion, I would ask the members of this committee to not judge the merits of the Department of the Navy's installations and environmental program solely through a single lens comparison of this year's budget request vs. last year's enacted level. We continue progress on most fronts, and the decline in funding is generally due to reduced requirements or less costly alternatives.

We remain steadfast in resolving inadequate housing concerns. Consistent with Department of Defense and our own priorities, we will eliminate inadequate family housing by FY-2007 through increased reliance on our privatization efforts and the help of BAH increases that make it more likely for our members to find good, affordable housing in the community. We have maintained momentum to fix housing for our single Sailors and Marines, particularly with respect to getting our shipboard sailors a place ashore they can call home when their ship is in homeport. We hope to extend the benefits of family housing privatization to barracks with three pilot projects that are being developed. The very robust \$1.2 billion military construction request will revitalize existing facilities while acquiring those to support future weapon systems and readiness needs. We will apply the proceeds from selling Prior BRAC property to accelerate cleanup of remaining BRAC property. Facilities sustainment, restoration and modernization trends are positive, with the exception of the Navy recapitalization rate; regrettably, affordability required that we defer near term progress in using Operations and Maintenance, Navy funds to revitalize facilities.

We have fully funded all environmental commitments. The decline in environmental funds is tied to finishing the cleanup on Kaho'olawe, and the completion of several research and development projects and pollution prevention initiatives. Encroachment remains the primary environmental issue we must deal with. We will work with the Department of Interior to craft mutually acceptable solutions under MBTS. However, other environmental statutes, with ESA and MMPA of particular interest to the Department of Navy, remain to be resolved. We need to craft an appropriate balance between environmental stewardship and military readiness.

That concludes my statement. I appreciate the support of each member of this committee, and will try to respond to any comments or concerns you may have.

Department of the Air Force

Presentation to the Committee on Armed Services
Subcommittee on Readiness
United States House of Representatives

Subject: FY 2004 Air Force Budget Overview
for Military Construction

Statement of: THE HONORABLE NELSON F. GIBBS
ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS, ENVIRONMENT & LOGISTICS)

MAJOR GENERAL EARNEST O. ROBBINS II
THE AIR FORCE CIVIL ENGINEER

BRIGADIER GENERAL WILLIAM A. RAJCZAK
DEPUTY TO THE CHIEF OF AIR FORCE RESERVE

BRIGADIER GENERAL DAVID A. BRUBAKER
DEPUTY DIRECTOR, AIR NATIONAL GUARD

20 March 2003

**Not for publication until released by the
Committee on Authorizations
United States House of Representatives**



BIOGRAPHY

UNITED STATES AIR FORCE

NELSON F. GIBBS



Nelson F. Gibbs is Assistant Secretary of the Air Force for Installations, Environment and Logistics, Washington, D.C. As Assistant Secretary, he heads three division departments that deal at the policy level with Air Force facility and logistical issues. The department's responsibilities include installations, military construction, base closure and realignment; environment, safety and occupational health issues; and all logistical matters.

Mr. Gibbs was born in Rochester, N.Y. He is a graduate of Clarkson and Purdue universities. After two years of commissioned service in the U.S. Army, he began his career in private industry. Mr. Gibbs served in a variety of positions for Deloitte & Touche, an accounting, tax and consulting firm, from 1962 to 1991. He joined Northrop Grumman Corp., an aerospace and defense company, in 1991, and was the Corporate Controller until 1999. He left private industry for public service with the Office of Management and Budget, where he served as Executive Director of the Cost Accounting

Standards Board until he was confirmed in his current position in 2001.

EDUCATION:

1959 Bachelor of civil engineering, Clarkson University, Potsdam, N.Y.

1962 Master of science degree in industrial management, Purdue University, West Lafayette, Ind.

CAREER CHRONOLOGY:

1. 1959 - 1962, U.S. Army officer
2. 1962 - 1970, General Management and Financial Systems Consultant, Deloitte & Touche, Los Angeles, Calif.
3. 1971 - 1981, Audit Partner, Deloitte & Touche, Los Angeles, Calif.
4. 1982 - 1985, Director of Audit Operations, Deloitte & Touche, Los Angeles, Calif.
5. 1986 - 1987, Lead client Service Partner, Deloitte & Touche, Los Angeles, Calif.
6. 1988 - 1991, Senior Partner, Deloitte & Touche, Tokyo, Japan
7. 1991 - 1999, Corporate Controller, Northrop Grumman Corp., Los Angeles, Calif.
8. 1999 - 2001, Executive Director, Cost Accounting Standards Board, Office of Management and

Budget, Washington, D.C.

5. 2001 - present, Assistant Secretary of the Air Force for Installations, Environment and Logistics, Washington, D.C.

PROFESSIONAL MEMBERSHIPS AND AFFILIATIONS:

Certified Public Accountant, State of California

(Current as of October 2001)

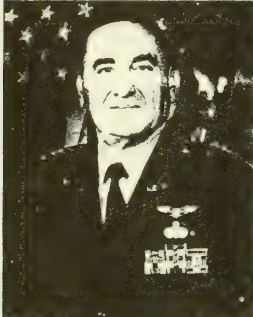




BIOGRAPHY

UNITED STATES AIR FORCE

MAJOR GENERAL EARNEST O. ROBBINS II



Maj. Gen. Earnest O. Robbins II is the Air Force civil engineer, Headquarters U.S. Air Force, Washington, D.C. He is responsible for organizing, training and equipping the 62,000-person civil engineering force, and for planning, development, construction, maintenance, utilities and the environmental quality of Air Force bases worldwide. This responsibility also includes services for housing, fire protection and aircraft crash and rescue, explosive ordnance disposal and disaster preparedness. Additionally, he oversees the Air Force Civil Engineer Support Agency at Tyndall Air Force Base, Fla., and the Air Force Center for Environmental Excellence at Brooks Air Force Base, Texas.

The general entered the Air Force in 1969 upon graduation from the University of Kentucky's ROTC program. He has served in various Air Force civil engineer positions at base, major command and headquarters levels. His assignments have included

base civil engineer squadron commander, director of plans and programs at the Pentagon, and command civil engineer at Air Force Space Command and Headquarters Air Combat Command.

EDUCATION:

1969 Bachelor of science degree in civil engineering, University of Kentucky, Lexington
 1973 Master of science degree in civil engineering, Arizona State University, Tempe
 1976 Distinguished graduate, Squadron Officer School, Maxwell Air Force Base, Ala.
 1982 Distinguished graduate, Air Command and Staff College, Maxwell Air Force Base, Ala.
 1985 Air War College, Maxwell Air Force Base, Ala.

ASSIGNMENTS:

1. September 1969 - January 1971, project officer, Directorate of Civil Engineering, Headquarters Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio
2. February 1971 - May 1973, chief of construction management, 6200th Civil Engineering Squadron, Clark Air Base, Philippines

3. June 1973 - December 1974, graduate student, Arizona State University, Tempe
4. January 1974 - December 1975, chief, industrial engineering, and chief, operations and maintenance, 388th Civil Engineering Squadron, Korat Royal Thai Air Force Base, Thailand
5. December 1975 - June 1978, contingency planner and command Prime Base Engineer Emergency Forces officer, Headquarters Strategic Air Command, Offutt Air Force Base, Neb.
6. July 1978 - June 1980, executive officer to the commander, Air Force Engineering and Services Center, Tyndall Air Force Base, Fla.
7. July 1980 - July 1982, action officer, Programs Division, Directorate of Engineering and Services, Headquarters U.S. Air Force, Washington, D.C.
8. August 1982 - May 1983, student, Air Command and Staff College, Maxwell Air Force Base, Ala.
9. June 1983 - June 1985, executive officer to the director of engineering and services, Headquarters U.S. Air Force, Washington, D.C.
10. July 1985 - June 1987, base civil engineer and commander, 52nd Civil Engineering Squadron, Spangdahlem Air Base, West Germany
11. July 1987 - August 1990, director, operations and maintenance, Air Force Engineering and Services Center, Tyndall Air Force Base, Fla.
12. September 1990 - February 1992, director, environmental programs, Headquarters Tactical Air Command, Langley Air Force Base, Va.
13. March 1992 - July 1993, director, plans and programs, Office of the Civil Engineer, Headquarters U.S. Air Force, Washington, D.C.
14. August 1993 - March 1996, command civil engineer, Headquarters Air Force Space Command, Peterson Air Force Base, Colo.
15. April 1996 - July 1999, command civil engineer, Headquarters Air Combat Command, Langley Air Force Base, Va.
16. July 1999 - present, Air Force civil engineer, Headquarters U.S. Air Force, Washington, D.C.

MAJOR AWARDS AND DECORATIONS:

Legion of Merit with oak leaf cluster
 Meritorious Service Medal with six oak leaf clusters
 Air Force Commendation Medal with oak leaf cluster

OTHER ACHIEVEMENTS:

Society of American Military Engineers Newman Medal

EFFECTIVE DATES OF PROMOTION:

Second Lieutenant May 12, 1969
 First Lieutenant Mar 15, 1971
 Captain Sep 15, 1972
 Major May 1, 1981
 Lieutenant Colonel Dec 1, 1985
 Colonel Sep 1, 1991
 Brigadier General Apr 1, 1997
 Major General Feb 1, 2000

(Current as of March 2000)



BIOGRAPHY

UNITED STATES AIR FORCE

BRIGADIER GENERAL WILLIAM M. RAJCZAK



Brig. Gen. William M. Rajczak is Deputy to the Chief of Air Force Reserve, Headquarters U.S. Air Force, Washington, D.C. In this role, General Rajczak assists the Chief of Air Force Reserve who serves as the principal adviser on Reserve matters to the Air Force Chief of Staff.

General Rajczak was commissioned in 1971 upon his graduation from the U.S. Air Force Academy, where he received a bachelor of science degree in engineering management. He is a career logistician, traffic manager and transportation officer. During his active-duty and Reserve assignments, General Rajczak served in unit, individual mobilization augmentee, and active Guard and Reserve programs, and in a variety of command and staff positions throughout the United States and the Pacific.

EDUCATION:

1971 Bachelor of science degree in engineering management, U.S. Air Force Academy, Colorado Springs, Colo.

1982 Master of science degree in systems management, University of Southern California, Los Angeles

1995 Air War College, by correspondence

1999 Master of science degree in hazardous waste management, National Technological University, Fort Collins, Colo.

2000 Senior Reserve Component Officer Course, Army War College, Carlisle Barracks, Pa.

ASSIGNMENTS:

1. June 1971 - September 1973, traffic management officer, 91st Combat Support Group, Minot Air Force Base, N.D. (January 1973 - August 1973, 8th Air Force Transportation, Andersen Air Force Base, Guam)

2. September 1973 - March 1975, traffic management officer, 43rd Combat Support Group, Andersen Air Force Base, Guam

3. March 1975 - October 1976, traffic management officer, 380th Combat Support Group, Plattsburgh Air Force Base, N.Y.

4. October 1976 - October 1981, air freight and passenger service officer, and aerial operations officer, 610th Military Airlift Support Squadron, Yokota Air Base, Japan
5. December 1982 - October 1992, transportation staff officer, Directorate of Transportation, 14th Air Force, Dobbins Air Reserve Base, Ga.
6. October 1992 - October 1993, Director of Transportation, 94th Tactical Airlift Wing, Dobbins Air Reserve Base, Ga.
7. October 1993 - August 1996, Commander, 94th Aerial Port Squadron, Robins Air Force Base, Ga.
8. August 1996 - February 1997, Director of Transportation, 22nd Air Force, Dobbins Air Reserve Base, Ga.
9. March 1997 - July 1998, Commander, 622nd Regional Support Group, Dobbins Air Reserve Base, Ga.
10. July 1998 - March 1999, Individual Mobilization Augmentee to the Director of Air Force Transportation, the Pentagon, Washington, D.C.
11. March 1999 - March 2000, Reserve adviser to the Deputy Chief of Staff for Installations and Logistics, the Pentagon, Washington, D.C.
12. March 2000 - January 2001, Mobilization Assistant to the Deputy to the Chief of Air Force Reserve, the Pentagon, Washington, D.C.
13. January 2001 - June 2002, Mobilization Assistant to the Director of Plans and Programs, Air Force Reserve Command, Robins Air Force Base, Ga.
14. June 2002 - present, Deputy to the Chief of Air Force Reserve, Headquarters U.S. Air Force, Washington, D.C.

MAJOR AWARDS AND DECORATIONS:

Legion of Merit
 Meritorious Service Medal with five oak leaf clusters
 Air Force Commendation Medal
 Air Force Outstanding Unit Award
 Air Force Organizational Excellence Award
 National Defense Service Medal with service star
 Armed Forces Reserve Medal with Hourglass

EFFECTIVE DATES OF PROMOTION:

Second Lieutenant Jun 9, 1971
 First Lieutenant Dec 9, 1972
 Captain Jun 9, 1975
 Major Jun 9, 1985
 Lieutenant Colonel Jun 9, 1992
 Colonel Aug 1, 1996
 Brigadier General Jul 16, 2001

(Current as of July 2002)





BIOGRAPHY

UNITED STATES AIR FORCE

BRIGADIER GENERAL DAVID A. BRUBAKER



Brig. Gen. David A. Brubaker is Deputy Director, Air National Guard, Arlington, Va. He assists the Director, Air National Guard, in formulating, developing and coordinating all policies, and plans and programs affecting the more than 104,000 Guard members in more than 1,841 units throughout the United States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

The general began his career as an enlisted member of the Indiana Air National Guard in 1971. He was commissioned at the Guard's Academy of Military Science, McGhee Tyson Air National Guard Base, Tenn., in 1973. He held numerous positions at the squadron and wing levels, and flew the F-100, F-4 and F-16. In 1988 he became the commander of a Guard detachment conducting operational test and evaluation at Eglin Air Force Base, Fla. In 1990, following the testing and installation of a weapons delivery system for the F-4E, the general was assigned as the ANG Adviser to the Directorate of Requirements for Air Combat Command at Langley Air Force

Base, Va. He joined the National Guard Bureau's Acquisitions Division in 1994, and began an aggressive modernization program to include night vision imaging systems, precision targeting system, data link and improved self-protection systems. The general is a command pilot with more than 2,500 flying hours.

EDUCATION:

1979 Bachelor of science degree in industrial supervision, Purdue University, West Lafayette, Ind.
 1979 Squadron Officer School, by correspondence
 1991 Air Command and Staff College, by correspondence
 1995 Air War College, by correspondence

ASSIGNMENTS:

1. March 1974 - March 1975, student, undergraduate pilot training, 3646th Student Squadron, Moody Air Force Base, Ga.
 2. March 1975 - November 1975, student, F-100 operational training, 162nd Fighter Wing, Tucson, Ariz.

3. November 1975 - January 1980, F-100 aircraft commander, 163rd Tactical Fighter Squadron, Terre Haute, Ind.
4. January 1980 - April 1980, F-4 operational training, 58th Tactical Fighter Training Wing, Luke Air Force Base, Ariz.
5. April 1980 - March 1985, F-4 aircraft commander, 163rd Tactical Fighter Squadron, Fort Wayne, Ind.
6. March 1985 - May 1985, maintenance officer training, Chanute Air Force Base, Ill.
7. May 1985 - August 1988, Chief of Quality Control, 122nd Consolidated Aircraft Maintenance Squadron, Fort Wayne, Ind.
8. August 1988 - February 1990, Commander, Air National Guard and Air Force Reserve Test Center, Detachment 1, Eglin Air Force Base, Fla.
9. February 1990 - March 1992, Air National Guard Adviser to the Directorate of Requirements, Headquarters Air Combat Command, Langley Air Force Base, Va.
10. March 1992 - June 1992, F-16 operational training, 61st Student Squadron, MacDill Air Force Base, Fla.
11. June 1992 - February 1994, Air National Guard Adviser to the Directorate of Requirements, Headquarters Air Combat Command, Langley Air Force Base, Va.
12. February 1994 - June 1996, action officer, National Guard Bureau Acquisitions Division, the Pentagon, Washington, D.C.
13. June 1996 - October 1999, Director, Air National Guard Acquisitions Division, Arlington, Va.
14. October 1999 - November 2001, Commander, Air National Guard Air Force Reserve Test Center, Tucson, Ariz.
15. November 2001 - present, Deputy Director, Air National Guard, Arlington, Va.

FLIGHT INFORMATION:

Rating: Command pilot
 Flight hours: More than 2,500
 Aircraft flown: F-100, F-4 and F-16
 Pilot wings from: Moody Air Force Base, Ga.

MAJOR AWARDS AND DECORATIONS:

Legion of Merit
 Air Force Commendation Medal
 Combat Readiness Medal with four oak leaf clusters
 National Defense Service Medal
 Air Force Longevity Service Award Ribbon with three oak leaf clusters
 Armed Forces Reserve Medal
 Air Force Training Ribbon

EFFECTIVE DATES OF PROMOTION:

Second Lieutenant Oct 24, 1973
 First Lieutenant Oct 25, 1976
 Captain May 5, 1979
 Major Jan 16, 1985
 Lieutenant Colonel Mar 12, 1991
 Colonel Jun 28, 1996
 Brigadier General Nov 15, 2001

Introduction

Mr. Chairman and members of the committee, good morning. I appreciate the opportunity to appear before you and present the Department of the Air Force FY 2004 military construction program. Today, I will present to the committee the Air Force investment strategies for facilities, housing, and environmental programs.

Overview

Our Total Force military construction and military family housing programs (MFH) play vital roles supporting Air Force operational needs, work place productivity, and quality of life. Today, when our nation needs its Air Force more than ever before, our installations are the platforms from which we project the global air and space power so important to combat operations overseas. During Operation ENDURING FREEDOM, we flew the longest bomber combat mission in history...44 hours traveling more than 16,000 miles...from Whiteman Air Force Base, Missouri, against targets in Afghanistan. Our military construction program is a direct enabler of this kind of dominant combat capability. In that same vein, as we send tens of thousands of airmen overseas to prepare for possible conflict with Iraq, the peace-of-mind they enjoy, knowing their families are safe and secure, living in adequate housing with state-of-the-art quality of life facilities, has direct impact on their ability to focus on the task at hand.

While the Air Force has always acknowledged the importance of robust funding for facility sustainment and recapitalization, in the past we have found that higher competing

priorities have not permitted us to address all the problems we face with our aging infrastructure. We turned a corner with our FY 2002 and 2003 military construction and family housing budget requests, both well in excess of \$2 billion. You supported those requests and increased them to nearly \$3 billion, making the last two years' infrastructure investment programs the two largest in more than a decade. We sincerely appreciate your support.

We're continuing this positive trend in FY 2004...we are requesting more than \$2.4 billion for Total Force military construction and Military Family Housing, a \$160 million increase over last year's request. The request includes more than \$770 million for Active military construction, \$60 million for Air National Guard military construction, more than \$40 million for Air Force Reserve military construction, and more than \$1.5 billion for Military Family Housing. In addition, we have maintained our focus on Operations and Maintenance (O&M) sustainment, restoration, and modernization (SRM) funding. Last year's O&M SRM request was nearly \$400 million more than in FY 2002. This year, we protected and actually increased that program growth. With the FY 2004 budget request, we will invest more than \$2 billion in critical infrastructure maintenance and repair through our O&M program.

When one considers our level of effort across the entire infrastructure spectrum (military construction, MFH, and O&M SRM), we plan to invest more than \$4.4 billion in FY 2004.

These Air Force programs were developed using a facility investment strategy with the following objectives:

- Accommodate new missions
- Invest in quality of life improvements
- Continue environmental leadership
- Sustain, restore, and modernize our infrastructure
- Optimize use of public and private resources
- Continue demolition of excess, uneconomical-to-maintain facilities, and
- Base realignment and closure

Mr. Chairman, Air Force missions and people around the world clearly depend upon this committee's understanding of and support for our infrastructure programs. That support has never wavered, and for that we are most grateful.

With this background, I will discuss in more detail our military construction budget request for FY 2004.

Accommodate New Missions

New weapon systems will provide the rapid, precise, global capability that enables our combat commanders to respond quickly to conflicts in support of national security objectives. Our FY 2004 Total Force new mission military construction program consists of 43 projects, totaling more than \$273 million. These projects support a number of weapons system beddowns; two of special significance are the F/A-22 Raptor and the C-17 Globemaster III.

The F/A-22 Raptor is the Air Force's next generation air superiority fighter. Tyndall Air Force Base, Florida, will house the F/A-22 flying training program. Nellis Air Force Base, Nevada, will be the location for F/A-22 Follow-on Operational Test and Evaluation. Langley Air Force Base, Virginia, will be home for the first operational squadrons. The FY 2004 military construction request includes one F/A-22 project at Tyndall for \$6 million, and three F/A-22 projects at Langley totaling \$25 million.

The C-17 Globemaster III aircraft is replacing our fleet of C-141 Starlifters. The C-17 provides rapid global mobility by combining the C-141 speed and long-range transport capabilities; the C-5 capability to carry outsized cargo; and the C-130 capability to land on short, forward-located airstrips. We are planning to bed down C-17s at Elmendorf Air Force Base, Alaska; Travis Air Force Base and March Air Reserve Base in California; Dover Air Force Base, Delaware; Hickam Air Force Base, Hawaii; Jackson Air National Guard Base, Mississippi; McGuire Air Force Base, New Jersey; Altus Air Force Base, Oklahoma; Charleston Air Force Base, South Carolina; and McChord Air Force Base, Washington. Thanks to your support, construction requirements for Charleston and McChord were all funded in prior-year military construction programs. Our request for FY 2004 includes a \$1 million facility project at Altus, a \$8 million assault runway at Camp Shelby (near Jackson, Mississippi), two facility projects for \$12 million at McGuire, and six facility projects for \$63 million at Hickam. Other new mission requirements in FY 2004 include the Global Hawk beddown at Beale Air Force Base, California; Combat Search and Rescue aircraft beddown at Davis-Monthan Air Force Base, Arizona; C-130J beddown at Pope Air Force Base, North Carolina, and Little Rock

Air Force Base, Arkansas; and Joint Strike Fighter facilities at Edwards Air Force Base, California.

Invest in Quality of Life Improvements

The Air Force is committed to taking care of our people and their families. Quality of life initiatives acknowledge the increasing sacrifices our airmen make in support of the nation and are pivotal to recruiting and retaining our best. When our members deploy, they want to know that their families are stable, safe, and secure. Their welfare is a critical factor to our overall combat readiness. Our family housing and dormitory programs, and other quality of life initiatives reflect our commitment to provide facilities they deserve.

Family Housing

Our Air Force Family Housing Master Plan provides the road map for our Housing military construction, O&M, and privatization efforts, to meet the goal of providing safe, affordable, and adequate housing for our members. Our FY 2003 budget request reflected an increase of more than \$140 million over the prior year--we have built on that increase with our FY 2004 request and in the programmed budgets for the next three years. With the exception of four northern-tier locations, we will eliminate our inadequate housing units in the United States by 2007. The inadequate units at those four northern-tier locations will be eliminated by 2008, and the inadequate units at our overseas installations will be eliminated by 2009.

For FY 2004, the \$700 million we have requested for housing investment constructs

nearly 2,100 units at 18 bases, improves more than 1,500 units at eight bases, and supports privatization of nearly 7,000 units at seven bases. I'll discuss our housing privatization program in more detail later. Our FY 2004 housing operations and maintenance program totals nearly \$835 million.

Dormitories

Just as we are committed to provide adequate housing for families, we have an ambitious program to house our unaccompanied junior enlisted personnel. The Air Force Dormitory Master Plan is a comprehensive, requirements-based plan, which identifies and prioritizes our dormitory military construction requirements. The plan includes a three-phased dormitory investment strategy. The three phases are: (1) fund the replacement or conversion of all permanent party central latrine dormitories; (2) construct new facilities to eliminate the deficit of dormitory rooms; and (3) convert or replace existing dormitories at the end of their useful life using a new, Air Force-designed private room standard to improve airman quality of life. Phase 1 is complete, and we are now concentrating on the final two phases of the investment strategy.

Our total requirement is 79,400 Air Force dormitory rooms. We currently have a deficit of 11,400 rooms, and the existing inventory includes 3,700 inadequate rooms. It will cost approximately \$1 billion to execute the Air Force Dormitory Master Plan and achieve Office of the Secretary of Defense's (OSD) FY 2007 goal to replace all of our inadequate dormitory rooms. This FY 2004 budget request moves us closer to that goal.

The FY 2004 dormitory program consists of 12 dormitory projects at nine US bases and two overseas bases, for a total of \$203 million. On behalf of all the airmen affected by this important quality of life initiative, I want to thank the committee. We could never have made it this far without your tremendous support.

Fitness Centers

Other traditional quality of life investments include community facilities, such as fitness centers, vital in our efforts to attract and retain high-quality people and their families. A strong sense of community is an important element of the Air Force way of life, and these facilities are important to that sense of community as well as to the physical and psychological well-being of our airmen. The FY 2004 military construction program includes fitness centers at Lajes Air Base, Azores; Mountain Home Air Force Base, Idaho; Spangdahlem and Ramstein Air Bases, Germany; and Royal Air Force Bases Lakenheath and Mildendall in the United Kingdom.

Continue Environmental Leadership

The Air Force continues to ensure operational readiness and sustain the public trust through prudent environmental stewardship. We are meeting our environmental cleanup commitments and Department of Defense goals through effective outreach and partnering with federal and state regulators and team-building with stakeholders and communities. Meeting our legal obligations remains a primary objective of the Air Force environmental quality program. Our record of environmental stewardship illustrates our environmental ethic, both here in the United States and overseas.

In addition to ensuring our operations comply with all environmental regulations and laws, we are dedicated to enhancing our already open relationships with both the regulatory community and the neighborhoods around our installations. We continue to seek partnerships with local regulatory and commercial sector counterparts to share ideas and create an atmosphere of better understanding and trust. By focusing on our principles of ensuring operational readiness, partnering with stakeholders, and protecting human health and the environment, we remain leaders in environmental compliance, cleanup, conservation, and pollution prevention. We have reduced our open enforcement actions from 263 in 1992 to just 22 at the end of 2002.

We have one project (\$7 million) in our FY 2004 environmental compliance military construction program. With it, we will install arsenic treatment systems on water wells at Kirtland Air Force Base, New Mexico, to ensure the base is in full compliance with the US Environmental Protection Agency's (EPA) new standard for maximum arsenic levels allowed in drinking water. Failure to install these treatment systems could result in fines from the EPA, shutdown of water wells at Kirtland, and the increased cost of purchasing and distributing potable water on the base.

Sustain, Restore, and Modernize our Infrastructure

Overseas Military Construction

The quality of our installations overseas continues to be a priority to us. Even though the majority of our Air Force personnel are assigned in the United States, 16 percent of our forces are permanently assigned overseas, including 29,000 Air Force families. The Air Force overseas

base structure has stabilized after years of closures and force structure realignments. At this level, our overseas infrastructure still represents 11 percent of our Air Force physical plant. Now, old and progressively deteriorating infrastructure at these bases requires increased investment. Our FY 2004 military construction request for European and Pacific installations is \$171 million totaling 22 projects. The program consists of infrastructure and quality of life projects in the United Kingdom, Germany, the Azores, Italy, Turkey, and Korea, as well as critical facilities on Wake Island. We ask for your support of these operational and quality of life projects.

Planning and Design/Unspecified Minor Construction

We are also requesting planning and design and unspecified minor construction funding. Our request for FY 2004 planning and design is \$102 million. These funds are required to complete design of the FY 2005 construction program, and to start design of our FY 2006 projects. We have requested \$23 million in FY 2004 for our total force unspecified minor construction program, which is our primary means of funding small, unforeseen projects that cannot wait for the normal military construction process.

Operations and Maintenance Investment

To sustain, restore, and modernize what we own, we must achieve a balance between our military construction and O&M programs. Military construction allows us to restore and recapitalize our facilities. O&M funding allows us to perform facility sustainment activities necessary to prevent facilities from failing prematurely. Without proper sustainment, facilities

and infrastructure wear out sooner. We also rely on O&M funding to directly address many of our critical restoration and less-expensive recapitalization needs. These funds enable commanders in the field to address the facility requirements that impact their near-term readiness.

Since the early nineties, constrained defense budgets resulted in reduced military construction funding. For a few years, adequate O&M funding partially offset this military construction decline. However, between FY 1997 and FY 2001, competing priorities forced the Air Force to cut sharply into both military construction and O&M funding. Our effort to sustain and operate what we own was strained by minimally funded O&M, which forced us to defer much-needed sustainment and restoration requirements. Thankfully, along with the robust military construction programs provided in the last two years, we have been able to restore our O&M balance for the second year in a row. In FY 2004, our sustainment, restoration, and modernization share of the Air Force O&M funding is more than \$2 billion--allowing us to properly invest in facility sustainment (to keep our good facilities good) and invest some O&M funding in restoration and modernization work compared to FY 2003. Our known restoration and modernization O&M backlog has grown to nearly \$8 billion, so it will be important for us to continue this precedent of higher O&M facility investment in the future.

Optimize Use of Public and Private Resources

In order for the Air Force to accelerate the rate at which we revitalize our inadequate housing inventory, we have taken a measured approach to housing privatization. We started with

a few select projects, looking for some successes and “lessons learned” to guide our follow-on initiatives. We awarded our first housing privatization project at Lackland Air Force Base, Texas, in August of 1998, and all 420 of those housing units were constructed and are occupied by military families. Since then, we have completed two more projects (at Robins Air Force Base, Georgia, and Dyess Air Force Base, Texas) and have two more under construction (at Elmendorf Air Force Base, Alaska, and Wright-Patterson Air Force Base, Ohio). Once these two projects are complete, our privatized unit total will exceed 3,800. We are on-track to award another eight projects in the next 12 months. Looking at 2005 and beyond, we are targeting an end-state of privatizing 60 percent of the US-based housing inventory. Our FY 2004 budget request includes \$44 million to support the privatization of nearly 7,000 units at seven bases: Luke Air Force Base, Arizona; Altus and Tinker Air Force Bases in Oklahoma; Shaw Air Force Base, South Carolina; Sheppard Air Force Base, Texas; McChord Air Force Base, Washington; and F.E. Warren Air Force Base, Wyoming.

We continue to pursue privatization of utility systems at Air Force installations. Our goal is to privatize utility systems where it makes economic sense and does not negatively impact national security. The Air Force has identified 420 of our 650 systems as potential privatization candidates. We expect to release approximately 190 requests for proposal over the next 24 months.

Continue Demolition of Excess, Uneconomical-to-Maintain Facilities

For the past seven years, we have pursued an aggressive effort to demolish or dispose of facilities that are not economical to sustain or restore. From FY 1998 through FY 2002, we demolished more than 12 million square feet of non-housing building space. We expect to demolish an additional 2 million square feet in FY 2003, for a total reduction of 14 million square feet. This is equivalent to demolishing six Air Force bases equal to the combined square footage of Whiteman, Goodfellow, Moody, Brooks, Vance, and Pope Air Force Bases. Looking at FY 2004 and beyond, we will continue to identify opportunities for Air Force demolition through facility consolidation. In general, we consider our facility demolition program a success story enabling us to reduce the strain on our infrastructure funding by getting rid of facilities we don't need and can't afford to maintain.

Base Realignment and Closure

The Air Force views the FY 2005 Base Realignment and Closure (BRAC) process as a unique opportunity to reshape our infrastructure to optimize military readiness and to ensure we are most efficiently postured to meet new security challenges. In January of this year, we created a Basing and Infrastructure Analysis group within Headquarters Air Force. This office will serve as the Air Force focal point for the FY 2005 BRAC process. Our major commands are following suit with creating their own analysis structures to support the BRAC process. As in previous rounds of base closures, we are establishing a Base Closure Executive Group (BCEG) composed of general officers and senior civilians representing a variety of functional areas, including those with range and airspace operational expertise. We continue to participate in joint BRAC forums

with our sister services and the Office of the Secretary of Defense to meet the Secretary of Defense guidance and develop the required processes and procedures.

The Air Force leadership is committed to meeting the BRAC FY 2005 statutory deadlines and ensuring our analytical processes are unbiased and defensible.

The Air Force continues to work with the local reuse authority at each base closed under previous rounds of BRAC to minimize the impact on the local community from the closure. This effort has led to the creation of over 48,000 jobs with 86 percent of the property transitioned for reuse.

While these facilities are being returned to their respective communities, the Air Force has a continuing responsibility for environmental cleanup from past industrial activities. The Air Force approaches this responsibility at our BRAC bases with the same prudent environmental stewardship as at our active bases. We have spent \$2.2 billion since FY 1991 in environmental cleanup at closing bases, and for FY 2004, the Air Force is requesting \$176 million to continue the cleanup.

Conclusion

In conclusion, Mr. Chairman, I thank the committee for its strong support of Air Force military construction and family housing. With your help, we will ensure we meet the most urgent needs of commanders in the field while providing quality facilities for the men and

women who serve in and are the backbone of the most respected aerospace force in the world. I will be happy to address any questions.

**QUESTIONS AND ANSWERS SUBMITTED FOR THE
RECORD**

MARCH 20, 2003

QUESTIONS SUBMITTED BY MR. TAYLOR

Mr. TAYLOR. Is \$28 million going to be the total cost for the outlying landing field (that will service both Naval Air Station Oceana and Marine Corps Air Station Cherry Point)? How many acres of land would that entail purchasing?

Secretary JOHNSON. According to the draft Environmental Impact Statement (EIS), the one-time costs for an outlying landing field is about \$290 million. The draft EIS considers six alternatives, including two preferred alternatives that each include an outlying landing field. A final EIS is expected this summer, followed by a Record of Decision. Depending on the outcome of the Final EIS and Record of Decision, project funds will be used to acquire interest in approximately 50,000 acres of land.

QUESTIONS SUBMITTED BY MR. RODRIGUEZ

Mr. RODRIGUEZ. Regarding Kelly Air Force Base, we still have some Air Force organizations that are located there even though it was closed. I wonder when they are going to be leaving since we did close down the base. Will the missions that are still located at Kelly Air Force Base be moving to Lackland Air Force Base? What is the plan?

Secretary GIBBS. Kelly AFB officially closed on 13 Jul 2001, as part of BRAC '95. However, the Air Force retained a portion of the base and renamed the area "Kelly Field Annex of Lackland Air Force Base." In addition to the retained property and facilities, the USAF also leases some facilities on the portion of Kelly Air Force Base that was transferred to the local re-development group, known as Kelly USA.

- The 149 Fighter Wing (Air National Guard), 433 Airlift Wing (Air Force Reserve) and the Air Intelligence Agency (Air Combat Command) still operate from Kelly Field Annex and there is no plan to move those organizations
- Air Education and Training Command (AETC) is currently developing a long-range plan to address movement of all AETC-owned units.

QUESTIONS SUBMITTED BY MR. CALVERT

Mr. CALVERT. You are planning to build some sewage treatment plants at Camp Pendleton, I noticed that it is going to be a tertiary plant. Obviously, we have water problems throughout California. What do you intend to do with the excess water that comes out of the plant since it is a valuable resource?

Secretary JOHNSON. The Department of the Navy recognizes that water is a valuable resource, particularly in southern California. Therefore, water reuse is a key factor being considered during the development of our Environmental Impact Statement (EIS) for an overall wastewater management strategy at Camp Pendleton. The EIS, which is expected to be complete in June 2004, will evaluate various wastewater management alternatives and recommend a way to proceed.

Mr. CALVERT. After March Air Force Base was realigned, how much money was spent to reconstruct Travis Air Force Base to accept the additional aircraft?

Secretary GIBBS. Twenty projects were executed on Travis AFB to accomplish the KC-10 realignment from March AFB. The projects totaled \$148.1M, which includes \$44.4M for military family housing requirements, \$7.5M for a dorm and \$3.5M for a child development center. The remaining fifteen projects (\$92.7M) are operations, maintenance and support facility projects, as well as the associated infrastructure requirements necessary to support the KC-10 squadron.

QUESTIONS SUBMITTED BY MR. MILLER

Mr. MILLER. Are you seeing a surge in child care development needs or is this a sustained need? What is this Air Force doing to fulfill this need?

Secretary GIBBS. The established Air Force need for full-time child care is 82,000 spaces. Currently, child development programs serve 54,000 children, or 64% of the

established child care need. This number has been a constant, sustained need for children 0–12 years old. The Air Force is fulfilling its child care needs through various methods. On-going efforts to build additional child care centers are helping meet the ultimate goal of 80% by 2007. In addition, approximately 2100 Licensed Family Child Care Homes provide care in on-base quarters for 13,000 children, or 24% of the total child care provided. Military spouses living off base are being licensed as family child care providers. Full time child care for older children (6–12) is offered in school age programs. This care is presently offered in Youth Centers, School Age Centers, Community Centers, and DoD schools where available. The Air Force has instituted several new programs to increase available child care. The Extended Duty Care (EDC) program provides child care for parents who work longer hours, shift work, shift changes, weekends, or emergencies. Additionally, this program serves Air National Guard and Air Force Reserves during training weekends; the Missile Care program provides 24-hour clock care to AF members assigned to missile sites who need care for their children for several days and nights in a row; the Returning Home Care Program provides 16 hours of free child care per child to members returning from deployments; the Home Community Care program assists Air National Guard and Air Force Reserve members with weekend care; and the Mildly III Care Program provides emergency child care for parents whose children do not feel well enough to attend their regular child care arrangements.

FISCAL YEAR 2004 NATIONAL DEFENSE AUTHORIZATION ACT—OUTSOURCING AND THE OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-76 PROCESS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
READINESS SUBCOMMITTEE,
Washington, DC, Tuesday, March 25, 2003.

The subcommittee met, pursuant to call, at 4:01 p.m., in room 2118, Rayburn House Office Building, Hon. Joel Hefley (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. JOEL HEFLEY, A REPRESENTATIVE FROM COLORADO, CHAIRMAN, READINESS SUBCOMMITTEE

Mr. HEFLEY. The committee will come to order. Before we begin, I would like to take time to praise and applaud the men and women of our armed forces for the tremendous job they are doing right now and all they do for our country. And our thoughts and prayers are certainly with them at this time.

Our troops are carrying out their mission, to protect the national security of our country. And to do their jobs well, they rely on many support functions that DOD identifies as non-inherently governmental. Our oversight hearing today focuses on those non-inherently governmental functions and the process that should be followed to determine who should perform those functions.

This hearing is intended to inform us about whether the proposed changes to Circular A-76 will properly serve our national security requirements, our troops and the taxpayer.

The first panel consists of the Honorable Angela Styles, Administrator of Federal Procurement Policy, within the Office of Management and Budget, and the Honorable Michael Wynne Principal Deputy Under Secretary of Defense for Acquisition, Technology and Logistics. Ms. Styles and her office are responsible for the contents of OMB Circular A-76, and she has been directly involved in the proposed revisions.

From the Department of Defense is Secretary Wynne who will be able to tell us to what degree the Department of Defense concurs with the proposed revisions to the A-76 Circular and how changes could be implemented.

The second panel will consist of representatives from the public sector and the private sector. Ms. Jacque Simon, Public Policy Director of American Federation of Government Employees, is quite familiar with the A-76 process, and Mr. Mark Wagner, Vice President, Government Relations, of Johnson Controls, and his company, have been involved in many A-76 competitions.

Any process that has as many name changes as this process has to be controversial. The Clinton Administration called the A-76 process "outsourcing." It was then changed to "strategic sourcing." Now it is "competitive sourcing." Under any title, however, the process continues to be controversial.

Hopefully, we will hear this afternoon to what degree the proposed revisions to the A-76 Circular improve the process and to what extent the stakeholder communities continue to have concerns.

With that, I would turn it over to Solomon Ortiz, the Ranking Member of this subcommittee who has had a lot of involvement in this process over the years and a deep interest in this process.

Mr. Ortiz.

STATEMENT OF HON. SOLOMON P. ORTIZ, A REPRESENTATIVE FROM TEXAS, RANKING MEMBER, READINESS SUBCOMMITTEE

Mr. ORTIZ. Thank you, Mr. Chairman. I join you in welcoming all of our distinguished witnesses today to this Readiness Subcommittee hearing on outsourcing and the proposed revisions to OMB Circular A-76. This is indeed a difficult time for our nation. We have embarked on a new national strategy supporting—involving military strategy that has already placed increased demands on military readiness.

Mr. Chairman, as our military forces and accompanying dedicated civilian work force face dangers and sacrifices related to the war with Iraq, they and their loved ones should know that we recognize their professionalism and appreciate the sacrifices made by them. I also want to express my personal thanks to Ms. Styles for her professionalism and dedication regarding revising the OMB circular.

The staff informed me that Ms. Styles took time from what has to be a very busy schedule to meet with committee and member staff and not only to provide a context for the review of the circular, but also solicit their input. And we thank you for taking that extra step.

The readiness of the force has never been better. The performance of the force is the best testimony to that fact. That level of readiness was not easy to achieve. Neither did it come cheaply.

At this time, Mr. Chairman, I am concerned about our ability to sustain that level of readiness. In addition to all of the other stresses on readiness, I do not believe that unconstrained privatization and assignment of quotas for outsourcing essential readiness-related activities that to date have made our military strong is the best strategy to keep those forces ready.

The Department would prefer to have us talk about core and non-core activities. But in times of conflict, I think we easily see that what we are really addressing are the essential services that contribute to the readiness of the force.

The concept of free and open competition for all goods and services appears to be a great money saving construct for peace time activities. However, not all saving schemes are good for sustained readiness; and they rarely produce the savings anticipated. Con-

cern about outsourcing is not a partisan issue here on this subcommittee or with the House Armed Services Committee.

If you examine the signatures on numerous letters to the President, the Secretary of Defense and the transcripts from the subcommittee hearings, you will note that outsourcing has the distinction of being one of the few issues that Members from both sides of the aisle have expressed concern.

The most recent letter to the Secretary of the Army regarding the so-called "third wave" is just one example. I am aware that most of the studies concluding support were initiated during the Clinton Administration. But it is the assignment of arbitrary quotas for the outsourcing of jobs currently being performed by federal workers that significantly raises the bar. I must make it clear that I am not anti-competition, for it makes sense.

But I believe that any competition must be fair and objective. Neither am I against the A-76 process or further methods available to the Department to change the character of the work force. It is the only one that permits some form of public private competition. My major concern is that as the Administration revises the circular with the intention of making it more efficient, that we do it right.

At the end of the day, we should not have to continue to hear complaints that the process is broken, it is not there or it takes too long.

I would have preferred that the revised A-76 Circular be published and distributed so that we would be able to discuss the specifics of the circular at this hearing. I am also concerned that there is no one tasked with assessing the implementation of the new process and identifying whether any additional changes are needed. Since the A-76 is such an important process, Mr. Chairman, we need to make sure that we do it right. And I look forward to listening to the testimony. Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you, Mr. Ortiz.

I would like the witnesses to keep their statements as near five minutes as you can so we have plenty of time to ask questions.

And Ms. Styles, I will start with you.

**STATEMENT OF HON. ANGELA B. STYLES, ADMINISTRATOR,
FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGE-
MENT AND BUDGET**

Ms. STYLES. Chairman Hefley, Congressman Ortiz and members of the subcommittee, I am pleased to have this opportunity to discuss competitive sourcing and the proposed improvements to OMB Circular A-76. My comments apply government wide, but have been tailored to reflect the experiences, requirements and needs of the Department of Defense.

As most of you know, competitive sourcing is a government-wide initiative to encourage competition for the performance of government activities that are commercial in nature. Using OMB Circular A-76, departments and agencies have been asked to determine whether commercial activities should be performed under contract with commercial services or in-house using government facilities and personnel.

Competitive sourcing is a means to an end, with the means being public-private competition and the end being better management of our government, better service for our citizens, and lower costs for our taxpayers. I cannot emphasize enough that competitive sourcing is not about outsourcing; nor is it about downsizing the work force. Rather, competitive sourcing is about creating incentives and opportunities for efficiency and innovation through competition.

No one in this Administration cares who wins a public private competition. But we very much care that government service is provided by those best able to do so in terms of cost and quality, be that the private sector or the government itself.

After nearly two years of hard work with the agencies, many are for the first time institutionalizing public private competition. DOD has the largest and most experienced infrastructure in the Federal Government for conducting competitive sourcing. The Center for Naval Analysis, OMB and other evaluators have reviewed the results of DOD competitions and found two very important things. The net long-term savings are significant and permanent, and few federal employees are worse off after competition.

DOD is committed to reviewing half of the 452,000 positions in commercially available activities. The Department is well on its way to competing a total of 67,800 positions during fiscal year 2002 and 2003.

DOD estimates the announcement of new A-76 competitions for approximately 10,000 positions in fiscal year 2003 and at least 10,000 in fiscal year 2004. Based on DOD's experience with public-private competition and the Department's well-established infrastructure, these goals are practical, achievable, and, in the long run, will save the taxpayers billions of dollars.

In spite of DOD's many successes, the process faces valid criticisms and problems. As a result, last November, OMB proposed major revisions to OMB Circular A-76, including one that would help the agencies distinguish between commercial and inherently governmental activities, make the process simpler and easier to understand, including the use of well tested practices under the Federal Acquisition Regulation, would allow the accommodation of a program's need for best value and innovation while still requiring costs to remain a factor in all competitions and the deciding factor in most competitions.

We would also ensure that sourcing decisions are made in real time by imposing deadlines to reduce the current average three-year process to one year. We have been working aggressively to consider more than 700 comments that were submitted on the proposed rule. In analyzing these comments, we have been keeping an especially watchful eye out for areas where the processes may cause results that fall short of expectations, especially instances where the process unnecessarily constrains management's ability to fully consider and compare options.

In this regard, a number of commenters pointed out that the Administration convenience may drive agencies to pursue direct conversions even where in-house providers may be the better alternative.

We are examining the viability and fairness of a process that will allow for a highly simplified and streamlined consideration of public and private sector sources. We are aiming to complete our review of public comments shortly so that agencies may take advantage of this transformed process.

In conclusion, we are asking federal agencies to reconsider how they accomplish their missions. We are also asking them to test assumptions about the best provider through the competitive process. Competitive sourcing is laying the groundwork for improved mission performance through quality service at the lowest possible cost.

Like any other effort that fundamentally seeks to transform the way we do business, this initiative has its challenges. But we are steadfast in our commitment to competition which lies at the heart of competitive sourcing. We will, no doubt, deliver the quality service our war fighters need and the taxpayers deserve. That concludes my prepared remarks.

[The prepared statement of Ms. Styles can be found in the Appendix on page 585.]

Mr. HEFLEY. Thank you very much.

Mr. Wynne.

STATEMENT OF HON. MICHAEL W. WYNNE, PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE (ACQUISITION, TECHNOLOGY, LOGISTICS), DEPARTMENT OF DEFENSE

Secretary WYNNE. Chairman Hefley, Congressman Ortiz and distinguished members of the committee, I am pleased to have this opportunity to appear before you today to discuss the Department's competitive sourcing program and upcoming plans relative to the proposed revision to OMB Circular A-76.

The Department must continue to do business better, faster and at reduced cost to maintain our focus on readiness. In order to focus on what we do best, our core mission activities, we must become more efficient in our support, or non core, services. We have the most experience in the Federal Government in competing support services using the public, private competition process.

During the fiscal years 2000 through 2002, we completed approximately 570 A-76 competitions with about 56,000 positions; and we are scheduled to complete A-76 competitions on an additional 15,000 positions, by the end fiscal year 2003. The 570 completed A-76 competitions have resulted in either a contract or in-house decision that will generate over 5 billion dollars in savings over the life of the contracts, normally about five years.

Furthermore, our studies verify these savings are real and persist over the entire performance period and beyond. These savings and efficiencies are most often attributed to the A-76 process, but in reality they are a result of the competition, not the specific process.

The often called old A-76 process was often lengthy, complex and frustrating for all involved. That very frustration is, in part, an evolutionary outgrowth of the many attempts, over time, to address legitimate concerns to protect the interests of all participants, be they government employees, private sector competitors, federal managers and the taxpayer.

The Office of Management and Budget (OMB) has now issued a proposed revision to OMB Circular A-76 to address recommendations made by the Commercial Activities Panel (CAP) in May of last year. The proposed revision offers promising and overdue improvements to the A-76 process, especially with respect to aligning it more closely with procedures that are already used under the Federal Acquisition Regulations (FAR). The proposed revisions were published for review, and we have supplied comments. Let me mention a few key aspects of the proposed revision.

We support the intent of the proposed 12-month time limit. The length of the existing process must be reduced to minimize the anxiety and uncertainty concerning the outcome. Our experience indicates some of our larger and more complex competitions may, in fact, take a little bit longer; and we understand there is some flexibility remaining to identify up front those that might have the prospect of exceeding 12 months.

We also support the concept of the Agency Tender Official (ATO) to represent the government bid. We are working to decide at what level this official should and will be provided. Additionally, the Department's general counsel has expressed concern with what the appropriate source of legal advice to the agency tender official should be to maintain appropriate separation between the government bid and the source selection process. Numerous new responsibilities like these are created by the new process and must be worked out once the circular is finalized and will be worked out, I think, to the satisfaction of everyone.

We recognize that accurately costing the government proposal remains a major challenge under the proposed new process. The Commercial Activities Panel recognized the Department's costing model as an example for use in all federal competitions, and we have continued to improve this important tool.

The proposed revision to Circular A-76 is completely consistent with our costing model but will require updates to our software to reflect changes in the process, as well as terminology changes on some of the reports that it issues. We are working closely with the Office of Management and Budget and other federal activities to ensure these updates can be promptly completed following release of the final revision to the circular.

One of the proposed competitive procedures would authorize agencies to conduct cost and technical tradeoffs, to select the source that would provide the best value in public private competitions. Just as we seek to conduct these tradeoffs in our normal private sector acquisitions, we would like to employ them in the A-76 process as well. Currently, the Department is limited in this regard by our statutory requirement to make decisions on a cost only basis.

We find in fairness that this excludes good ideas that are sometimes provided by the most efficient organization (MEO) or the contractor. And as we go to an agency technical official, it could exclude some good ideas that they might have.

So we would like to encourage you, and we have submitted proposals seeking legislative relief from the restriction of 10 USC 2462. All too often we receive little or no private sector interest when we compete our commercial activities because our solicitations invite low cost proposals that never involve new business

processes. This discourages innovation at the public level and at the private sector proposals as well.

We will continue to work with on a cooperative basis the Office of Management and Budget as they finalize the circular and expect the final version to provide a fresh start in our attempts to use public private competition to improve our support services.

We fully support the President's Management Agenda for competitive sourcing. The Office of Management and Budget has identified a long-term competition goal of 226,000 positions. We feel we are on track to meet our interim 15 percent goal of completing A-76 competitions on the 67,800 positions by the end of fiscal year 2003.

The remaining 35 percent will be met using both A-76 competitions and the alternatives to A-76 that we have developed in conjunction with our core competency review that has been initiated by the Business Initiatives Counsel.

While the Department continues to conduct A-76 competitions, we believe the Department and the taxpayer are best served by employing a wide range of business tools designed to make our operations more efficient. The respective military departments are developing plans for submission with the fiscal year 2005 program to meet the longer term President's Management Agenda targets.

The Army's Third Wave initiative is an example of one such effort to explore and continuously explore both alternatives and also whether or not they missed any opportunities to A-76. The Army expects to have their core and non-core functions identified by around April, 2003 and then they will determine specific implementation plans beyond those ones they have currently tabled.

Mr. Chairman, committee members, thank you again for the opportunity to address these important issues with you today. I am happy to answer any questions that you might have.

[The prepared statement of Secretary Wynne can be found in the Appendix on page 591.]

Mr. HEFLEY. Thank you very much, Mr. Wynne.

Mr. Ortiz.

Mr. ORTIZ. Ms. Styles, earlier concern was expressed that the rewritten circular weakens the definition of inherently government that was established by the Congress in the Fair Act. Additionally, the DOD has already acknowledged that inherently government work may have already been contracted to the private sector but cannot determine the extent that has happened because there is no complete inventory of work performed by contractors.

Does the revised circular address that concern?

Ms. STYLES. I think you will find when we come out with the final circular that we will return to the original definition. While no decisions are final at this point, we have taken concerns that people have expressed into account, both dealing with the presumption of activities being commercial as well as the definition of inherently governmental. I think that you will find we have softened that a little bit in the final circular when it is finalized.

Mr. ORTIZ. But in your studies and going through putting this circular together, have you really found savings?

Ms. STYLES. Absolutely. We have extensive studies dealing with savings in terms with the competitions themselves. We have stud-

ies from the Center for Naval Analysis that prove long-term savings. We have studies from the General Accounting Office as well that have proven long-term savings.

The average is about 30 percent without regard to whether the public or private sector wins.

Mr. ORTIZ. Mr. Secretary, a major concern has been the need to establish a process for competition for work currently contracted to the private sector for new work. And are you comfortable with the process established in the revised circular, and how would such a competition be conducted? And who would represent the government or the most efficient organization, and how would they be funded?

Secretary WYNNE. In inverse order, I think the application of an Agency Technical Official should be a good start. As to funding, I think it depends upon the complexity of the operation and the opportunity. But there is no reserve right now for funding, per se. There is, I think, an opportunity.

If the operation still has a portion of their work force remaining, and you have only outsourced some of it, it makes it a lot easier to frame an end source because you have retained the administrative construct and concept for it. If there is no longer an operation, I would share with you that it is very difficult for me to conceive of exactly how an insourcing process would be accomplished.

And I think that would have to be worked through very carefully to make sure that we carefully address, frankly, what we have induced the private sector to do before.

On the case of bad performance, I think you probably have a lot more motivation than on good performance, as is normal.

Mr. ORTIZ. Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you.

Mr. Hostettler.

Mr. HOSTETTLER. Thank you, Mr. Chairman.

Mr. Secretary, I have a question about the cost technical trade-offs that you mentioned. What organic capability will determine cost technical tradeoffs? And the reason I ask that is you suggest that without this cost technical tradeoff we may discourage innovation. If the individual that is tasked to write the A-76 cannot write an innovative A-76, how will the process determine that a cost technical tradeoff is being realized?

Secretary WYNNE. If I can, Congressman Hostettler, let me correct one thing. And that is it is an Agency Tender Official. And I think I mischaracterized it as agency technical which would actually be subordinate, if you will.

I think, again, in the creation of the Agency Tender Official, it would really be dependent upon the expertise that is extent within the current MEO organization. But what I found in my corporate experience is the employees are the ones who really know how to do things better if they were only asked and they were given the freedom to construct a more creative outcome.

Actually looking at an operation from the outside in, it is a little bit harder. So in actuality, I see if you release the creative instincts of the employees that are present, you may find a more creative approach. Unfortunately, the current rules restrict us to just simply low costing the present process and do not allow those employees

to give, if you will, a surface for their creative thought as to how they could do their work more efficiently.

And I would not pretend to say that, therefore, this gives the employee organization an advantage because maybe there are more creative people in the contracting sector. But what I found is I get the best productivity when I went down to the line and interviewed the people who were doing it.

Mr. HOSTETTLER. Which I would agree with. And if I can be a little gratuitous in here, we have seen many examples of the A-76 process play out at various installations across the country. What we have few examples of is the business and process reengineering such as that conducted at Naval Service Warfare Center Crane in Indiana.

Secretary WYNNE. Right.

Mr. HOSTETTLER. I think something similar to what you are suggesting should be taken out.

Some of the members on this committee may not know, but B&PR, Business and Process Reengineering, is a process where the installation takes the initiative to find savings and efficiencies through a business reorganization, streamlining and reengineering of some of its business practices, all without being mandated to do so through direct privatization, A-76, or any other mandated process.

If I can, what value do each of you see place on a B&PR process, Business and Process Reengineering process? And what do you think are the prospects for allowing more facilities to find the efficiencies and savings through such a process?

Ms. STYLES. Many of the comments that we received in response to our draft brought up exactly the point that you have mentioned. What we have done in writing the final circular, taking into account the comments we have received, is to try and front load the process well before public announcement to make sure that agencies go through this process of assessing and analyzing the activity before they ever make the decision to actually have a competition.

What we have found oftentimes at Defense and at other agencies that are now starting this process is that they will make a public announcement. They will say 1,000 positions are being considered. And then once they actually go through at least some level analysis, there are really only 200 positions that they are competing. But they have upset 1,000 people in the work force without taking the upfront management initiative and decision making to do the hard work before they come to public announcement.

We have some really good examples of this in the civilian agencies now. The Department of Education, for example, has taken 18 months really going through this process, making difficult decisions and difficult management decisions about what is appropriate for sourcing, what is not, what other management tools are available.

And we really have tried to take that now and to put that as a requirement, a mandatory requirement in the circular, preliminary planning before you ever start down the track of publicly announcing a competition.

Secretary WYNNE. I would tell you that it is the American way. The competition is really the stuff of efficiency. And it is interesting that I think Business Process Reengineering, the larger the or-

ganization, the more reticent they are to do Business Process Re-engineering because they think they have by a miracle stumbled upon the best way to do their job.

It takes a cathartic event, something to come upon them. And I think whether it is released publicly or privately—in other words, let's get ready. We have got to avoid this. Let's pull together as a team and get that kind of buy in, then Business Process Re-engineering makes one heck of a lot of sense.

And, unfortunately, in the absence of a competition program or a commitment to competition, I will tell you just on my own experience, it is a lot harder to get people to believe that they are not doing their job in the most efficient way possible.

Mr. HOSTETTLER. Mr. Chairman, if I could ask—very quickly?

I would just ask to consider that as organizations go through a process which has been done in the case of Crane Naval Service Warfare Center, not with regard to a particular outsourcing, but with regard to facility wide, the entire warfare center took this on and has across its many functions done Business and Process Re-engineering.

They also find themselves also subject to the A-76 process. And if that is something that we could consider, whether it is our legislation or whether it is your proposals that we look at ways of if there has been success with regard to a particular organization, that we would waive the A-76 process at some time as there has been success measured.

And the success based on some objective criterion that the Congress and the Administration could come up with. Something to think about. I thank the chairman.

Mr. HEFLEY. Thank you very much. Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman. And thank you for holding this very important hearing.

Ms. Styles, the GAO has been critical of the draft revision to the A-76 Circular for the lack of guidance on calculating savings from A-76 studies. What guidance will you be placing in the final version concerning the calculation of the savings?

Ms. STYLES. I think we will be placing explicit guidance in the final circular on the calculation of savings as well as explicit guidance on tracking competitions that are progressing.

Mr. REYES. Can you be a little more specific in terms of—

Ms. STYLES. In the final—

Mr. REYES. And the reason I ask you is because oftentimes from personal experience when we have dealt with the maximum efficiency organization, the net savings that you indicated in the response to my colleague, Mr. Ortiz, of 30 percent was at the front end when there is typically no restriction in future years of that cost rising again. And the issue is of primary importance to me because in the early 1980s, I was chief of the border patrol sector in McAllen.

And under the Reagan Administration, this was one of the ideas that they had that would save money for federal agencies. And I personally saw a less than \$4 oil charge for one of our patrol cruisers go to as much as \$24. The reasons for that were the function was after hours.

It was either on a weekend or an emergency situation where vehicles had gone down, had had to be redlined and additional vehicles brought on line. So that meant that others would have to come in and bring those necessary vehicles back up to standard. That is why I asked you that question.

Ms. STYLES. Sure. I think there are two different problems that we have found in the process. One, when a most efficient organization wins, that our agencies have not been holding that entity accountable for actually organizing in the way that they promised to. Our circular will require agencies to enter into binding performance agreements when a public sector entity wins.

You cannot enter into a contract with yourself, with the Federal Government, but you can enter into a binding performance agreement which would hold the public sector entity accountable for following through on what they have promised to do.

I also think it is important to ensure that we follow through on what the private sector does. We have significant regulations and significant auditors. You know, these are Federal Government auditors in place with most of our major federal contractors.

And a large part of their job—and these people are actually on site with our federal contractors—and a large part of their job is to make sure that they are properly accounting for their costs. So I think that we have in the new circular, coupled with our Federal Acquisition Regulations, which are, for the Department of Defense, in excess of 1,500 pages right now.

I think when you put those two together that we have significant procedures in place to hold both the government's most efficient organization as well as our private sector contractors accountable.

Mr. REYES. And would there be performance clauses? Would there be penalties?

Ms. STYLES. Absolutely. Absolutely. Your—I am sorry. Go ahead.

Mr. REYES. What do you envision the range of those penalties or those performance clauses to be?

Ms. STYLES. They would be—the binding performance agreements would be generally in the nature of a contract with the public sector. The options that are available with a private sector contractor would be the options that were available with the public sector entity.

You could continue if they failed and you want to terminate the binding performance agreement, you can continue public sector performance. You could have another competition. You could have a streamlined competition to decide that the private sector was more cost effective. So you would have the panoply of options available at termination of the binding performance agreement that would be available with the private sector contractor.

Mr. REYES. But certainly one of the options that would not be available would be the in-house because they would have long fallen by the wayside?

Ms. STYLES. Not necessarily. I mean, certainly, you know, there are situations even with our private sector contractors where we work pretty hard to get them back up to the level that we want them to be at. That is still an option. You do not necessarily terminate in every instance because that may not be in the best interest of the government.

Mr. REYES. Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you.

Mr. Taylor.

Mr. TAYLOR. I am going to yield my time to Mr. Abercrombie.

Mr. HEFLEY. All right. We will get to Mr. Abercrombie.

Mr. Jones.

Mr. JONES. Mr. Chairman, thank you very much. And I just wanted to verify with the very competent staff that this effort to make government more efficient and more competitive goes back to the days of Dwight Eisenhower. And I was speaking to my good friend, Mr. Hostettler, and I was thinking that we are trying so hard to make government more efficient that we are about to bankrupt the taxpayers. But anyway, that is my feeling.

I have a couple of questions that I would like to ask. First, Ms. Styles, you very kindly came to my office a year ago. I, along with other Members of Congress, were concerned with the A-76 process when there is a competition between the private sector and the public sector. And should there be a dispute over the process that the public employees do not have the same rights to proceed as far as appeals as the private sector does?

So I am wondering in this legislation that you all are proposing if the appeals process is treating both the public sector in competition with the private sector and vice versa the same appeals process.

Ms. STYLES. Our circular is executive branch policy. It is up to the General Accounting Office to decide, based on the circular that we have written, whether the Agency Tender Official will have standing or not. I cannot guess.

That is a question for the General Accounting Office to answer about whether what we have created in an Agency Tender Official feels, tastes and acts like a private sector contractor to the extent to which they would grant standing before the General Accounting Office.

Mr. JONES. I would think that you and Mr. Wynne would certainly, if this program under your leadership and this Administration's leadership is going to have a chance to be successful that as it relates to the competitive bid process, you would want everybody to be treated equally and fairly as they are under the law outside of this process as it relates to appeals. So if it is not the same appeal process for one, you would want them both to be treated fairly? Would you say yes or no?

Ms. STYLES. Absolutely. We want all parties to this process to be treated fairly. It is not within our power right now to grant them appeal rights. I think we have created something that is more likely than the current circular to have appeal rights at the General Accounting Office.

Mr. JONES. So if this is still in question as we move forward, would the Department's position be to support legislation by this committee or an amendment by this committee to make sure that each side is treated fairly?

Ms. STYLES. The Administration has not yet taken a position on that. This legislation did come up in the previous Congress. We have had discussions internally. We have still not reached a position to either support or oppose such legislation.

There are a number of people within the Administration that have an interest in this other than just my office, a number of people that are concerned about growth of litigation. And we are still having discussions about where the Administration will stand on this.

Mr. JONES. Well, you cannot be successful being competitive unless people are treated fairly and equally. And those of us on this panel on both sides of the political aisle believe in the competitive process.

But we have seen—and I am sorry that I forgot to bring a letter from the former base commander at Cherry Point who is now retired, Marine Major General Bolton, who said that the A-76 process, prior to this legislation that you are going to be proposing, had been a total failure and monies had not been—it had created more problems than it had solutions. But that is neither here nor there.

Let me give you another situation as this relates to core positions. If there should be a conflict between a higher command over what should be retained as core capability with the local unit, how would you see this resolved?

Ms. STYLES. From my position at OMB—this may be a better question for Mr. Wynne. But from my position in OMB, we have let the agencies decide what is appropriate or not, to designate as inherently governmental or commercial. When they make a commercial designation, we have left it to the agencies to decide what is core, what is open for competition and what is not open for competition.

We have given them the flexibility, certainly, when they ask for our guidance on different issues for consistency among and between agencies and sometimes even within their own agency. We certainly have given them advice. But we have generally left that to their determination. They are there. It is usually more appropriate for them to make those decisions.

Mr. JONES. I appreciate.

I know my time is up. If I might finish on this very quickly, Mr. Chairman? I have been disappointed, and I hope that under your leadership things will change, that when a higher authority says that we do not believe that this job is core at the local entity, if you will, that instead of talking to the local leadership—I am making this very generic because of a situation that has happened in my district—the local leadership as to coming down from the higher authority to sit down to really, sincerely talk and find out what the locals believe is core so they can maintain and do the job the best of their ability; the higher authority says no, we do not think it is core. So therefore, we make that decision.

There has got to be some coordination, if you will, between the local unit that knows day in and day out what they need versus somebody sitting in Washington, D.C., that just wants to make changes. So I hope as we move forward with this, Mr. Chairman, that this is a great concern to me because I think if the process that they are proposing is going to be successful and everybody be treated fairly, then we have got to communicate with the people that are in the field day in and day out as to what they need. So, thank you, Mr. Chairman.

Mr. HEFLEY. Thank you, Mr. Jones.

Mr. Marshall.

Mr. MARSHALL. Thank you, Ms. Bordallo. I needed help flipping that switch.

And thank you, Mr. Chairman.

Ms. Styles, I have spent a little bit of time talking with some folks in the Rand Corporation about what inherently governmental means, what does core mean. Could you tell me what you have in mind when you think of inherently governmental? How do we figure that out? That seems like a very broad concept to me.

Ms. STYLES. It is. And honestly, I think people can debate it for a very long time. I think there is almost any position you can take it and one place, people believe it is inherently governmental; at another place, they have arguments for why it is commercial. In my mind, there are a great number of positions that are inherently governmental, that are related to determining regulations that are committing the government's money, actually signing the contracts, regulations that are required to fulfill particular constitutional duties.

There are certainly a wide range of inherently governmental activities. There are also a wide range of commercial activities. We have people at the department, at all the other departments and agencies that hang drywall, that serve food, that are lifeguards, that mow the lawn.

My focus has been on activities that have already been determined to be commercial, that are clearly available in the yellow pages, that we can clearly subject to the forces of competition without ever having to have the argument about what is inherently governmental or commercial or not because they are very clearly commercial in nature.

So I have tried to focus my office and to focus the agencies, not on the debate on what is inherently governmental or commercial. And I think you will find in the final circular that we also have refocused on not debating what is inherently governmental or commercial, but on competing the activities that are clearly commercial in nature.

Mr. MARSHALL. What percentage would you say—I guess there is a reference in the materials that I have read to a certain number of jobs, 460,000 something like that, having been identified as not inherently governmental. Does your take on this, you know, offered by the commercial sector, does your take come up with the same number of jobs, a smaller number of jobs?

Ms. STYLES. Our inventories that the agencies submit to us—there are, I believe, at the department around 460,000 jobs identified as commercial in nature. Government wide, there are about 850,000 jobs that are commercial in nature. That does not mean that all the commercial jobs are appropriate for competition, however.

There are many examples at the Department of Defense of jobs that are commercial that they have decided are not appropriate for competition. One that comes to mind immediately for me is air traffic controllers at the FAA. They are commercial in many countries around the world. We have, for very valid reasons, decided to designate them as commercial, but not subject unto competition.

Mr. MARSHALL. You have other examples of commercial that should not be subjected to the competition? Why did you decide that the air traffic controllers should not be subjected to the competition?

Ms. STYLES. That was a decision by the Department of Transportation. They determined for a variety of reasons, including safety, that they did not want to subject them to the competition. But that because it is apparent in many other places that this is performed by the private sector, that they are clearly commercial.

Mr. Wynne may be able to give you some examples of a few other—there is a wide variety of functions that are commercial, but not subject to competition at the Department. Some of it is research and development. Some of it is dealing with specialized scientific information. Some of them, whether appropriate or not, a large number of attorneys seem to be classified as either inherently governmental or commercial and not subject to competition.

Mr. MARSHALL. In your remarks, you cite a Naval study that suggests substantial savings. Do you have any studies that suggest there are no savings or that the savings disappear over a period of time?

Ms. STYLES. Not that I have read, no. I think people often make those arguments. But we have looked to the General Accounting Office and to the Center for Naval Analysis.

Mr. MARSHALL. Rand Corporation?

Ms. STYLES. I do not know if the Rand Corporation has studies or not.

Secretary WYNNE. We have in fact constructed a Commercial Activities Management Information System that the GAO was in on the founding. And I believe they are coming over to look at how it has progressed and whether it is a fully auditable system. It is actually going to assist, if you will, the proof of the pudding for especially the most efficient organizations because they did not have anybody to follow along with their annual performance. And now they will.

And I think we update it quarterly or maybe even monthly so far. So it is pretty near real time performance enhancement. We have not identified—I am sure there is at least one somewhere that has not saved the government money. Most of those, I will tell you, have also not undergone Business Process Reengineering in their new effort. And what we find is in combination, that is where we are going to get, I think, a lot of additional, if you will, effective competition.

But back to your last question, Angela offered that I would provide you a couple of examples. Frankly, a lot of corporations have begun to outsource their procurement activities just so that the engineers, if you will, just write up the requirements.

And the procurement people are essentially from another organization. We do not choose to do that. We choose to continue to have our contracting officers have the warrant. But we are finding out that in the commercial sector, more and more of that is becoming inherently commercial.

To some extent, the venerable construction battalions (CBs) could be considered to be commercial activity because there is a lot of

people who can do that work, but not necessarily under the same conditions that they are willing to do it.

Mr. MARSHALL. I think one more question. I have heard an estimate that under the current A-76, about 50 percent of the competitions are won by government employees. That under the proposed A-76 Circular—and I guess you are modifying it not, so this may change—but an estimate that maybe 10 percent of these competitions would be won by federal employees.

And I am not sure where that came from. Do you have an estimate internally concerning what the breakdown would wind up being under the new proposed circular?

Secretary WYNNE. I do know, sir, that it continues to be above 50 percent. I do not see any reason in the new proposal why they should not do as well or if not better. I think one of the pieces of legislation that we are talking about here which is to allow best value may actually assist.

Although I should not reach too far because I have not seen the data; but to speculate under the future on a proposal like that, I think it is an issue of assisting them to do better, frankly, which should result in them doing better.

Mr. MARSHALL. Ms. Styles, you agree with that analysis? Do you think this will head toward the government employees' side of the table or the contractors' side of the table or be neutral?

Ms. STYLES. We certainly do not have any statistics on this, other than what is under the current circular, which is public sector winning in excess of 50 percent of the time. I certainly think if it is in that range, you know, in the range of 40 to 60 percent, that we are probably right on target.

I will reemphasize one of Mr. Wynne's points that what we are trying to do and what we are writing is emphasize that we cannot put everything in a process.

Mr. MARSHALL. Yes.

Ms. STYLES. That a lot of this really is going to rely on implementation and the commitment of resources and training to the public sector employees to run the competition right and to be able to compete for it. We have added additional language to at least be clear in the circular that that is very important to us, that there is a management commitment to have a competitive public sector bid, to allow people to be trained, to allow people to really be able to compete.

I mean, the point here is to have a competitive process to really have a group of public employees that can prove how they can do this best and that have access to the resources, whether that is training or whether that is a changed operation for them to be able to compete better. We really have tried to add that to the circular to be clear that we want that. But again, it is not something you can always write in a process. We have to be clear that implementation is a commitment of management to do this.

Mr. MARSHALL. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Snyder.

Mr. SNYDER. Thank you, Mr. Chairman.

Ms. Styles, I mean this with great respect and affection because I think what you do is very important. But why would you ever take such a God-awful job?

Ms. STYLES. My husband asks me that pretty frequently.

Mr. SNYDER. Well, he wrote the question.

No, I am curious. It seems to me that—this is where I do the gold tablet analysis that we all think we have a sense of right and wrong and that a lot of the decisions here we base on what we think Moses would have brought down with gold tablets from, you know, whatever the mountain was. That is not what this about.

This is an intricate, people-made process that there is never going to be any gold tablets with. And I am curious as you have been in the job and why you took the job, how you see the history of this. I mean, where do you see this going?

Ms. STYLES. Well, it is a sordid and ugly history, I think. It has been around since 1950. It has been controversial.

I come at this from a perspective of wanting to make the government work better. I want the Federal Government to be managed better. I see that the principles of competition can help us manage the Federal Government better.

And I do see a lot of good progress, which is why I came to my job, to make some progress, and why I continue in the job. Because I think we can take the lessons from the Department of Defense, learn from them there, but translate them at the civilian agencies. Because honestly, the civilian agencies have not done much of this, have not spent a lot of time managing their agencies.

A lot of them have never gone to their employees and asked them how can you do your job better, how can you do it more efficiently. And some days I think it is unfortunate that you have to do that through competition. But it does work when you do it through competition. But I always tell people when they ask me well, is the process going to get better? Is this not going to be subject to criticism any more?

And the answer is no. It is going to continue to be subject to criticism. It is difficult. It involves people. It involves their jobs. But that is not any different than it is in the private sector. It is very hard in the private sector to go through this process. Private sector companies have competitions that are just like this. Other private sector companies just make an executive decision to outsource. But that does not make it any easier. I think it is equally as hard in the private sector as it is in the public sector.

Mr. SNYDER. One of the questions that has come up—and I think in your written statement you refer to a study that talks about money that has been saved from outsourcing.

What kind of analysis has been done of the employees' benefit package at the private end of things?

One of the concerns in all this is that—for example, I had a job open a month ago, a couple of months ago. I think we listed the salary as 25 to low 30s. And I had over 180 applicants. Not for the salary; it is because health insurance is really important to people.

Now have we helped the country if we have saved money? What you are trying to do through procurement policy—but in exchange, we exchanged 50 federal employees with health insurance and a retirement program for 50 employees that have a, either non existent or much less benefits package? I mean, how do you respond to that question? Where does that fit into this calculation?

Ms. STYLES. We do not have specific studies. I do think it is an interesting question.

Mr. SNYDER. Isn't that important, though?

Ms. STYLES. I think it is.

Mr. SNYDER. Should not the Federal Government be a model for how we treat each other? I am a family doctor. That is how I got here. And one of the things that concerns me is we have a terrible problem with uninsured which kills people. People do not go the emergency room, or they do not go see the doctor because they are uninsured. And yet, do you have some kind of protections or analysis in this process that has been going on for 40 years that looks at that aspect of things?

Ms. STYLES. The process has not been used. The policy has been there for 50 years, but the process has not been used extensively except in the past 10 years. But we do have some information on the effects of employees. And I am glad to get you some more specifics from the Department of Defense where I think we can get that for you.

You have some categories of people here when an A-76 occurs and when the public sector loses the competition. Most of the employees are moved to another job within the agency. You have people that retire. You have people that retire, and I would say most of the people that retire go work for the contractor.

Most of the contractors that bid on these do not have an existent work force so they hire people from the Federal Government. The people that retire receive their retirement pay, and they also start working for the contractor. You have a small category of people who are actually forced to leave. And that is usually in very low, less than five percent based on these competitions.

You have people that are forced to leave that go work for the contractor. So you have a few categories of people. But the effects on the employees at least from what I have heard from the Department of Defense are not significant.

Mr. SNYDER. Just one final comment because my time is up.

Ms. STYLES. Sure.

Mr. SNYDER. Ms. Styles, I appreciate your comment. But I mean, I understand what you said there about the current employees; but the bottom line is that you may have, I do not know, \$10 million worth of goods or services currently being done by 200 federal employees with health insurance that may now, through this process, be done by 200 U.S. citizens who have no health insurance, have no benefits package.

Ms. STYLES. I do not think we have the specific data on that. But I am more than happy to look and see if we can find it. I certainly understand your point. And I think that it is important for us to look into that to see what the statistics are.

Mr. SNYDER. Yes. I think so, too. Thank you.

Ms. STYLES. Sure.

Mr. SNYDER. Thank you for your indulgence, Mr. Chairman.

Mr. HEFLEY. Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman, Mr. Ortiz, to our witnesses. I am going to ask a question that has to do with the area that I represent. And that is Guam. Guam has been used as a test case for the A-76 process. And as a result, we have wit-

nessed a reduction in jobs and the loss of valuable island skilled laborers.

The Navy's base operation support contract was signed for seven years. But it is now up for a rebid after only two years. I feel these problems have been brought about because the A-76 process did not factor in the growth of the Navy on Guam. So my question is, the first question is do the contracts look to future growth?

Ms. STYLES. I certainly hope in our new circular that we can take more of these situations into consideration with extension preplanning and acquisition planning requirements. On the Commercial Activities Panel (CAP) which I served, we took a look at Guam, and we took an extensive look at Guam and considered it in the recommendations the Commercial Activities Panel made.

Ms. BORDALLO. My second question is the small businesses on Guam are not happy that they were shut out from the contract. Does the A-76 process work to support the unbundling of contracts to increase the involvement of small businesses and ensure the involvement of local contractors that are more likely to be responsive to the needs of the military? And the second part of that question is how do alternatives to the A-76 promote these priorities?

Ms. STYLES. I will answer the first part of the question. When the private sector wins an A-76 competition, more than 60 percent of the time it is won by a small business. Not all of the competitions are small. But most of the competitions are small. And it is a ripe area for small businesses to be able to compete at the Department of Defense where they may not be able to compete as a prime contractor on other contracts.

So I think it is an area that has significantly opened for small business, and certainly based on statistics has significantly opened for small business. We certainly keep an eye toward some of the larger competitions to make sure that they are open to small business, whether that is at a prime level or at a subcontracting level.

Ms. BORDALLO. If I could ask just one more question? It has to do with your remarks about the percentage of A-76 contracts awarded to small businesses. You said the majority are awarded to small businesses. I was wondering whether you could break out in total dollar amounts what the value of small business contracts are compared to big business?

In other words, you may award a big business that would be multi-million dollars, and if you add up all the small businesses, it may not add up to that much. So I just wondered could you answer that.

Ms. STYLES. I do not have those statistics with me, but I would be glad to answer those for the record.

[The information referred to can be found in the Appendix beginning on page 643.]

Ms. BORDALLO. Thank you.

Mr. HEFLEY. Mr. Abercrombie.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

Mr. Wynne, page two of Ms. Styles' statement she said the Center for Naval Analysis and other evaluators unnamed have reviewed the results of DOD competitions. I presume they mean all of DOD competitions, unless it is just for the Navy. It says, number

one, the net long-term savings are significant and permanent. But I cannot find anything in here that shows me penny one.

Can you elucidate for me what are the significant and permanent savings that have occurred to this point?

And how have those funds been reallocated into the budget?

And how has that been reflected in the presentation of the DOD and funds that would not be needed, additional funds that would not be needed in authorization or appropriation?

Secretary WYNNE. I would have to say, sir, that the Center for Naval Analysis, number one, covered almost all of the Department of Defense studies that I am aware of. There could have been a time history. Our savings to date is approaching \$5 billion from 2000 to 2003.

And I believe I can best say that that is costs that we would have incurred that we did not incur. And it got reallocated to higher priority programs. Or our requests would have been higher by probably one or \$2 billion to accomplish the same—

Mr. ABERCROMBIE. Well, that is pretty good money. Can you tell me, say, three programs where that happened?

Secretary WYNNE. Can I tell you three programs where we saved money?

Mr. ABERCROMBIE. No, where you took those savings and reallocated them into programs where you otherwise would have had to ask for money that you did not have to ask for as a result.

Secretary WYNNE. Ongoing savings, sir, are reallocated under normal processes. It is not something we track like what dollar came out of—

Mr. ABERCROMBIE. You are able to track \$5 billion, you said. But you cannot track where it went?

Secretary WYNNE. We can track the difference between the projected costs and the costs incurred. Yes, sir.

Mr. ABERCROMBIE. You cannot account for where the money went?

Secretary WYNNE. Sir, our comptroller adds up the requests every year to a total and allocates priorities. And there are still things that we would like to fund, but we cannot.

Mr. ABERCROMBIE. That is not my question. Where did the money go?

Secretary WYNNE. Every dollar, sir, is fungible. And we do not color it—

Mr. ABERCROMBIE. Precisely the reason you ought to be able to tell me where it went.

Secretary WYNNE. I cannot.

Mr. ABERCROMBIE. Okay. Are you going to have binding performance agreements with your private contractors?

Secretary WYNNE. Yes, sir. Those are called contract prices.

Mr. ABERCROMBIE. Did you have one with—I remember some people from a company called Enron came in my office. And they told me how they were going to privatize the production of electricity out in the middle of the Pacific and what a great opportunity it was going to be for us.

Would they, had they gotten the contract to provide all the electricity for the United States military commands in the Pacific Ocean, in the middle of the Pacific, 2,500 miles away from any—

thing else around it? What kind of binding performance agreement would you have enforced if Enron had gotten that contract?

Secretary WYNNE. Sir, that is speculation. And I would not want to speculate on Enron.

Mr. ABERCROMBIE. Well, if it is speculation for me to ask a question, and the answer is it is speculation as to what would happen when you have a binding performance contract, then why should we authorize you to have a binding performance contract?

Secretary WYNNE. Sir, I think binding performance contracts on performing corporations is a good plan because it ties their hands as well as it looks to the future. And by the way, I would say that most of our work force actually wants to come to work performing better every day.

Mr. ABERCROMBIE. Mr. Wynne,—

Secretary WYNNE. Whether they are internal or external.

Mr. ABERCROMBIE [continuing]. I understand that.

Secretary WYNNE. And performing against goals, sir, is a way of standing up to a standard just like any other company.

Mr. ABERCROMBIE. You mean we do not have that in the Department of Defense today, performing against goal standards? The management that you have in the Department of Defense does not require that presently?

Secretary WYNNE. Sir, right now we are in the most efficient organizations, we have had a very hard time getting them to stand up to other than future forecasted costs.

Mr. ABERCROMBIE. Well, isn't that, then, a question of how you manage things? What does that have to do with the workers?

Secretary WYNNE. I think that is—change that we are making to the A-76 Circular that would allow us to come up with a binding future cost so that the management would feel energized to achieve those costs.

Mr. ABERCROMBIE. Will you have private audits, then, of the companies with which you have the agreements so that you do not run into situations like Enron?

Secretary WYNNE. We have audits on all the companies that we do business with, sir.

Mr. ABERCROMBIE. Well, you were doing them with Enron. Did you have any idea that what they were doing was taking place?

Secretary WYNNE. Sir, I would not want to speculate on Enron.

Mr. ABERCROMBIE. Well, it seems that is all you are doing is speculating. Just one last thing. I could not find anything in any of the material in here about terrorism and its relationship to how terrorists might be able to work their way into private companies and into private hiring as opposed to the process they might go through if they were civil service. Have you taken that into account since 9-11?

Secretary WYNNE. Sir, most of the requirements for private contracting are strict requirements for U.S. citizenry are there.

Mr. ABERCROMBIE. Thank you so much.

Mr. HEFLEY. Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman.

Ms. Styles, on February 10th I wrote you requesting your office provide me with an analysis and report of how A-76 activities would affect veterans' preference. I have yet to receive a response.

Therefore, has OMB analyzed impact that expanded A-76 activities would have on veterans' preference throughout the work force?

And will OMB initiate an expedited A-76 process without analyzing the impact it will have on veterans' preference?

Ms. STYLES. We have called your office and spoken to your staff on numerous occasions about this and explained to them that we are working on this. I have a letter on my desk to you with the information that we have available. It is with our legislative people right now.

I expect it to be signed out the door shortly. And I think it will provide you with a significant amount of the information you are looking for. I do not think it answers all your questions government wide. We do not have a database that coordinates what is commercial, inherently governmental, and the people that have a veterans' preference.

We have taken an extensive amount of time to, at least for the Veterans' Administration, to try and coordinate that data for you to get it to you.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Ms. Styles, one question. The Army is currently undergoing the Third Wave Initiative. And even the Army in the beginning stages they have said they intend to rely heavily on A-76. In the midst of these changes being proposed, talk to me about the level and quality of communication between your office and the Army as that process proceeds. Is everything going well?

Ms. STYLES. Yes. We certainly have had extensive discussions with the Army and with the Department of Defense as they proceed forward with their plans. We certainly have left it to the agencies to determine what is appropriate, what is an appropriate level of competition within their departments and agencies. I certainly applaud the Army for being aggressive at looking at this. And we will continue to work with them as they move forward.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you.

Two real quick questions because we are running out of time. I love the idea of the one-year deadline rather than the three to five-year deadline. But I wonder about the practicality of it. Do you have some level of assurance that you think most of these studies can be done in a year? And then, what happens if they are not done? We have set a deadline. Is this just arbitrary? Or do we have some evidence that this can really work?

Ms. STYLES. We certainly did look. There was evidence from other agencies, from the Department of Defense. Even the Navy has said that they can do this in 12 months. They came out with documents a couple of years ago shooting for a target of 12 months. We have other agencies like the National Institute of Health (NIH) that think it is a realistically achievable goal.

It is certainly a goal in our mind. We want to drive agencies toward a shorter process for the benefit of employees, for the benefit of management, for the benefit of the private sector. We are still working through the comments on this, what it is going to look like in final. We think we want to have flexibility for the agencies.

There are certainly competitions that are very complex. You may have 2,700 people in a competition in multiple locations. That is probably going to take more than 12 months. We recognize that.

I think we are going to have a little bit of added flexibility to go to 18 months when an agency hits either the 12 or the 18-month timeframe or one in between that they may set before the competition starts. But when they hit up on that deadline, we want them to come talk to us. We want to figure out what the problem is.

At OMB we will require at least some level of notification for it to move up the management chain for the agency to come talk to OMB so we can have an understanding of why it is taking that long, what is involved, what the issues are so we can have a little bit more of a hands-on management approach at OMB to figure out what the difficulties are so we can apply additional resources, so we can use best practices at one agency and another agency, so we can share both difficulties and problems as well as successes in meeting this 12-month timeframe.

I think it is going to be tough for some people. But we really want—we are very committed to driving toward a shorter process.

Mr. HEFLEY. Well, certainly a shorter process would be desirable for everybody concerned, I think, the employee and everybody else.

Ms. STYLES. Yes.

Mr. HEFLEY. Just one other question. And I should know this. But I am not sure I do. If I am an 18-year employee of the Federal Government, and my job goes privatized, am I vested in 18 years of my retirement? Or do I lose all of my retirement?

Ms. STYLES. I do not have the answer to the question. Although I would be glad to talk to OPM and get the answer to that question for you.

Mr. HEFLEY. Well, I do think that is important because—you make me feel better, by the way, that you do not know because I was feeling bad that I did not know. Because I should. But Dr. Snyder was talking about how we treat people. And I think that is very significant. Someone has invested their life with us serving us, and then we boot them out, and they are not vested in their retirement. So would you get that answer for me?

Ms. STYLES. Absolutely.

Mr. HEFLEY. And, Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. I was also curious if you are going to, when you compete this, obviously one of the costs of our government when you are competing, as Dr. Snyder and the chairman pointed out, we have good health care coverage.

One of the costs of having a government employee is that we give veterans' preference. Another cost of the government is that in many instances and quite possibly every instance, we see to it that those government employees who are activated with the Guard and Reserve call up involuntarily, we continue to compensate them.

Are you going to mandate, given that we do have the employer support crisis for the Guard and Reserve brewing with first this war and then the long-term occupation of Iraq afterwards by up to 100,000 American troops, that in your A-76 study so that we get apples to apples cost comparison? Or are you going to say no, that you do not have to do that if a guy goes from a pretty good paying, private sector job to being an E-4, that is tough luck for him?

Ms. STYLES. We do not intend to mandate that in the circular.
Mr. TAYLOR. How about the veterans' preferences?

Ms. STYLES. I have been having some discussions following a hearing that I testified at before the House Veterans' Affairs Committee on the veterans' preference issue. And I have been speaking to them directly to try and make sure that we get the discussion of veterans' preference in the circular accurate and correct.

So I will continue to work with the veterans' organizations and OPM to make sure that we are very specific in following what is required by the law in the circular.

Mr. TAYLOR. Ms. Styles, I am from Mississippi. Does that mean you are going to continue present veterans' requirements? Does that mean you are going to give them a nice look and wave them away?

Ms. STYLES. We will do what is required by the law.

Mr. TAYLOR. What is the requirement if it is farmed out?

Ms. STYLES. That is what I am trying to figure out working with OPM and the veterans' organizations. Certainly not my area of specialty. But I am committed to making sure that we do put in the circular what is required.

Mr. TAYLOR. Okay. Could I have an answer in writing as to whether or not you will continue for those jobs that are privatized to enforce veterans' preference?

Ms. STYLES. Absolutely. Absolutely.

Mr. TAYLOR. Okay. And also in writing what would be your policy for Guardsmen and Reservists who are involuntarily activated in situations like what we see now in Iraq.

Ms. STYLES. I am sorry. I apologize. Can you clarify your question with regard to the Guard and Reservists?

Mr. TAYLOR. Sure.

Ms. STYLES. Because I am not sure I understand it to be able to answer it.

Mr. TAYLOR. Okay. Right now if a Congressional employee is activated and called up with their Guard and Reserve unit, the Congressional office still continues to pay them, and they draw their pay as a Reservist. And it is obviously a cost to the government, but we try to be fair to these people so they do not take a beating in their pay if they are called to a much more dangerous job. My question is will you require that of those contractors who will be taking jobs either from DOD employees or any other government employee?

Ms. STYLES. I am not sure I understand how that relates to the circular. So when someone loses their job because of a competition, that we continue paying them at that level?

Mr. TAYLOR. If we take a job that is now a federal employee job, and because of A-76 you contract it out, is that contractor going to be required to have the same level for Guardsmen and Reservists that the United States government now has?

Ms. STYLES. I will get an answer to that question for you. I do not know the answer to that question.

Mr. TAYLOR. Okay.

Mr. HEFLEY. Thank you very much. And thank both of you. You have got a tough job. And we appreciate you coming in today and for your testimony.

Ms. STYLES. Thank you.

Secretary WYNNE. Thank you, Mr. Chairman, members of the committee. It is good to be here.

Mr. HEFLEY. Our next panel will be made up of Jacque Simon who is the Public Policy Director for the American Federation of Government Employees and also Mr. Mark Wagner, who is the Vice President of Johnson Controls.

And I am going to ask both of you witnesses if you would to try to keep your testimony to five minutes. And then we will have questions so far as we can go until six o'clock. We have to close down at six o'clock. But maybe we can get everybody's questions in by then.

Why don't we start with Ms. Simon?

**STATEMENT OF JACQUE SIMON, PUBLIC POLICY DIRECTOR,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO**

Ms. SIMON. My name is Jacque Simon. I am the Public Policy Director of the American Federation of Government Employees. We represent more than 600,000 federal employees, including 200,000 in DOD. On behalf of AFGE, I thank you, Chairman Hefley, for this opportunity to testify.

In the past when OMB Circular A-76 was mentioned, people's eyes glazed over. But not any more. OMB's controversial rewrite of the A-76 process has subjected it to some much needed publicity. In fact, 170 members of the House and Senate signed a joint letter of objection to OMB. And others have sent individual letters. And I am not surprised.

The November draft is so extremely one sided. The Army's radical Third Wave Initiative, which was designed to review for privatization without any public private competition at least 210,000 military and federal positions, is widely viewed as being beyond the public policy pale. But the A-76 rewrite is, in many ways, more extreme and could be used by the Army or other services to implement the Third Wave.

The rewrite might actually be called the fourth wave. And, if allowed to go forward, would likely constitute the final wave for federal employees, effectively wiping out what is left of the inhouse federal workforce. Indeed some contractors have bragged that under the rewrite, they will win 90 percent of all A-76 contests instead of the 40 to 50 percent they win today.

In some ways the new A-76 is like the Third Wave. It emphasizes privatization to the exclusion of all other methods of making federal services less costly, more effective and more efficient. And it requires agencies to treat 100 percent of their so-called commercial jobs as fair game for the contractors. That is, no strategic sourcing. But the rewrite is even worse than the Third Wave in other ways.

It has focused almost exclusively on the jobs of federal employees. While DOD is scheduled to consider outsourcing hundreds of thousands of federal employee jobs, not a single contractor job is scheduled to be competed for possible insourcing.

The rewrite, both overtly and covertly encourages agencies to perform even more direct conversions of government work to con-

tract without public, private competition, just like the Third Wave. For example, if agencies do not meet arbitrary deadlines, or if inhouse tenders are not submitted on time, innocent rank and file federal employees could pay the price with their jobs.

There are numerous instances in the A-76 rewrite of disparate treatment of contractors and federal employees despite all the rhetoric about fairness and level playing fields. Contractors do not necessarily have to compete in order to get contracts for new work. But federal employees do. Only federal employees have to compete if the value of their government work increases by 30 percent.

Contractors do not necessarily have to compete to continue their work after the contracts expire, but federal employees do or their work could always be directly converted to contract. Only contractors can fully participate in all appellate processes. Contractors do not have to include all of their costs in their bids. But federal employees will have to count some of their indirect labor costs twice.

This is only a partial list of the disparate treatment. My written testimony has much, much more. The new A-76 would allow agencies without DOD statutory safeguards to use a so-called best value process. Best value allows contractors to win even when they submit bids that are more expensive and less responsive to the solicitation than the bids submitted by federal employees.

Contractors note that best value has been used when private firms compete between themselves for government work, what they neglect to say, however, is that best value is highly controversial there, and has been frequently litigated because of its subjectivity. Some of its most fervent critics are small businesses.

Best value has two fatal flaws. It increases costs for government services, and it's inherent subjectivity makes it dangerous and inappropriate in the context of public private competition.

While it is hard to imagine systematic discrimination against one or another group of contractors, best value can be used systematically to discriminate against federal employees in favor of contractors, especially with an Administration on record in favor of privatization of 850,000 federal jobs.

Contractors know that best value competitions between contractors have cost taxpayers more and taken longer to complete. That is why they support them. Best value is great for the bottom line. But since privatization is usually promoted as a way to lower the cost of government, contractors have tried to change the subject and have asserted that best value is needed because A-76 does not allow agencies to consider quality. This is simply false.

The truth is that the current A-76 does let agencies consider quality. It lets agencies establish the quality standards they want, whether they are the same as before or higher, and then choose the provider with the lower cost. That is the standard and the method that is best for warfighters and taxpayers and federal employees.

AFGE urges the subcommittee to reject DOD's request to use a pro-contractor, best value process. The OMB A-76 rewrite already includes a pilot project for best value that will allow OMB to test and evaluate the process before implementing it in all non-DOD agencies. Given that even OMB is cautious, there is no reason for DOD to become a guinea pig.

Again, Chairman Hefley, I thank you for the opportunity to testify. And I look forward to answering the questions of you and your colleagues.

[The prepared statement of Ms. Simon can be found in the Appendix on page 597.]

Mr. HEFLEY. Thank you, Ms. Simon.

Mr. Wagner.

**STATEMENT OF MARK F. WAGNER, VICE PRESIDENT,
GOVERNMENT RELATIONS, JOHNSON CONTROLS, INC.**

Mr. WAGNER. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to testify today. I would like to offer three things for the subcommittee's consideration. One is an industry viewpoint on the revisions to OMB Circular A-76; two, to address some of the criticisms made surrounding the revisions; and three, give an example where A-76 works.

Mr. Chairman, the current A-76 process is broken. Competitions take too long, cost too much and are unfair. Too many good companies will not bid on A-76 under the current rules. And without bidding by industry, there is no true competition. And the government will never know if it has gotten the best deal for its commercial activities.

The proposed revisions represent a big improvement in the competitive sourcing process and will increase private sector competition for the government services, which is good for the taxpayer.

The revisions tighten the time lines for competition because delays are one of the major reasons for lack of competition. They make the process fair by treating the public sector proposals like private sector bids and by evaluating all proposals, both public and private under the same set of rules.

This reflects the recommendation made earlier this year by the Commercial Activities Panel to promote a more level playing field for A-76 competitions and to shift to a process governed by the Federal Acquisition Regulations. Shifting to an approach governed by the FAR is a logical process that is fair and time tested with clear rules. Unlike the current A-76, the FAR offers a transparent process that has the confidence of both government officials and industry.

Accountability is enhanced under the proposed revisions. If the public sector wins a competition, its proposals are treated like a contract under a binding performance agreement. Also for the first time, public sector employees as well as private sector will be allowed to make offers based on best value and, therefore, encourage innovation. And this was also recommended by the Commercial Activities Panel.

Since the public sector team is competing under the same set of rules and is treated as a true bidder, the most efficient organization represented by the Agency Tender Official should have the rights to protest to the General Accounting Office.

The proposed revisions do pose some other questions that must be addressed. And we hope those and other issues are resolved through the public comment process. Let me take a moment to address four criticisms leveled at the current proposed revisions.

First, many have expressed concern over the 12-month deadline called for to complete a competition claiming the time frame is too short. Currently competitions can drag on for years because there is no incentive to complete an A-76. These delays are unfair to the incumbent employees who are forced to live with the indecision as well as the private sector bidders. It is critical to the success of the process to have real deadlines imposed.

Second, there seems to be a concern over the fact that the process allows subjective factors and does not just make decisions based on low costs. Cost technical tradeoffs are used every day in federal procurements in private-private competitions under the FAR, and they have withstood scrutiny. Limiting all public-private competitions to cost only would be a disservice to the government which needs innovative technical solutions, whether the public sector or the private sector offer them.

A third criticism is that there is no system in place to hold contractors accountable or mechanisms for tracking costs. Frankly this is a myth I would like to try to dispel. The fact is contractors face rigorous accountability.

During competitions, we are subject to pricing conflict of interest and past performance evaluations. The FAR requires a number of financial audits, including pre-award audits, periodic financial audits during the contract, invoice audits, incurred cost audits and final close-out audits, just to name a few.

The FAR also requires most service contractors to comply with other requirements governing labor and compensation, safety and environmental regulations, all subject to oversight and audits.

Our contracts require quarterly reviews in which our customers examine every aspect of our work to determine if we are meeting the performance metrics under our contracts. Failure to meet our performance metrics puts our fee at risk.

Fourth, it has been said that contractors have incentives to reduce costs by requiring inferior compensation packages for those who perform government work. We have had a lot of discussion on that. The fact is that the Service Contract Act and the Department of Labor's wage and benefits determination govern the vast majority of wages and benefits for employees of service contractors that they pay to their employees.

If there is a concern over the compensation package for service contract employees, it should be directed to the current wage and benefits standards that are set by the Department of Labor, not to the competitive sourcing process.

Finally, it is worth examining a real life A-76. Johnson Controls won the A-76 competition for base operations support at Fort Lee, Virginia. The procurement took over two years. During the transition, we offered positions to nearly every one of the government employees on site.

Today, two things should be noted. First, our Army customer is very pleased with our performance; and we are currently having to surge our workload to support the mobilization efforts to Southwest Asia.

Second, we are pleased to say that the Transport Workers' Union Local 527 now represents our Fort Lee employees. Recently we

reached a collective bargaining agreement with the workforce which includes a 401(k) savings plan.

Mr. Chairman, at Fort Lee we are saving the Army money, performing well, and providing the workforce with good wages and benefits.

In conclusion, the current A-76 process is broken, so the challenge is to create a new process that encourages competition, treats public sector employees with respect, and provides for a fair system under which all competitors, public and private, are judged under the same set of rules. I think the spirit of the proposed revisions live up to that challenge.

Thank you for the opportunity to testify, Mr. Chairman.

[The prepared statement of Mr. Wagner can be found in the Appendix on page 635.]

Mr. HEFLEY. Thank you both.

Mr. Ortiz.

Mr. ORTIZ. Thank you, Mr. Chairman.

Ms. Simon, I think that on the 26th of June of last year you testified before this subcommittee regarding the Commercial Activities Panel Report. And if I am correct, I think you stated that your prepared testimony contained the following. The public private competitive process is not easy. In fact, it is often lengthy, complex and frustrating for all involved. That very frustration is in part an outgrowth of a process which has evolved over time to address legitimate concern for establishing a level playing field which will protect the interests of all participants, the government employee, the private sector, competitors, management and the taxpayer.

The panel's integrated competition process is a promising method to improve the fairness and reduce the lengthy time currently required.

Have you changed your views on the panel's output since last year or last June when you testified before this committee?

Ms. SIMON. Mr. Ortiz, I did not testify. But I can tell you that AFGE's position with regard to A-76 has not really changed in the past year. We were certainly critical of the existing A-76 and continue to be critical of the existing A-76.

And if it is implied in my testimony today that AFGE finds no fault with the current A-76, that is only by comparison with the November draft from OMB, which is so extraordinarily one sided to the detriment of federal employees. Our members have been troubled by the length of time that A-76 competitions have taken.

And one of the things that we hoped for in any kind of reform of A-76 would be a change in the process that would actually expedite these competitions and make them faster.

Unfortunately in the rewrite, the only thing that has changed is this arbitrary deadline. There is nothing in the process itself that has changed to make it faster. In fact, there is every reason to believe that best value competitions, because of their subjectivity and the numerous factors and sub-factors that are allowed to be considered in these contests, that they will actually take longer.

In addition, the Department of Defense, which is really the only executive branch agency that has any experience with A-76, its data shows that the most time consuming component of the A-76

process is the writing of the performance work statement, the description of the scope of work that is needed.

That has not really changed or certainly has not been expedited under the new system because again, as I said, with the opportunity to exercise so much discretion and include numerous, unlimited number of subjective factors, evaluation factors and sub-factors, there is every reason to believe that it will even be slower.

Mr. ORTIZ. And I know that you talk to a lot of federal workers. And I have had some complaints now. Sometimes they do contract out something from in-house to the private sector.

And some of the complaints that I have received is that once they contract out that particular job, and they cannot perform that job, they take workers—government workers to go out and teach that contract company how to do their work. And one of the things that we try to do is to be sure that the depots are competitive.

We want to be sure that they are productive. But when you send out workers to help out a contractor who could not do the job, they cannot be productive because the employees are gone. They are going some place else to help that new contractor learn how to do the job.

Now, I do not know if you have had any comments like that. I have.

Ms. SIMON. We have certainly experienced that kind of thing a lot. Actually the story that just comes into my mind when you started talking about that has been at Warner Robins when, you know, our members at Warner Robins have been forced to spend a lot of extra time and be detailed elsewhere in order to train contractors to do the same work that their former co-workers were performing.

Certainly this is a cost of contracting out that is not included in the consideration of relative costs of the private sector bid and the in-house bid. But as Ms. Styles said in the previous panel—and it is interesting in the context of Mr. Wynne's comments also about the difficulty of even conceiving of insourcing, bringing work that has been contracted out back in.

The contractors do not have ready work force. When they are bidding, they are bidding on a promise and a projection of being able to assemble a work force that is competent and capable of performing the way they describe in their proposal. But in order to do that, they need the federal employees who actually know how to do the job.

So it is certainly an ironic and very troubling situation for our workers who are sometimes put in the position, not only of training people to do their former jobs, but maybe doing their former jobs at a compensation that is inferior to what they previously earned.

Mr. ORTIZ. Now they have come up with best value instead of, not only good performance, being able to do the job, but I think this is the back door to contracting out most of the work now. There are some good contractors out there. There are good people who do good jobs. I am not against that. And I stated before in my opening statement when it makes sense.

But instead of going to the lowest bidder who has experience and they know who the workers are, they now have changed that to best value. Could you add something to that as to why you believe

they have changed that instead of the lowest cost to the government under the lowest bid?

Ms. SIMON. Well, as far as explaining what is preferable about best value from the perspective of contractors, it is certainly not—there is nothing that I can see about it that is preferable from the perspective of taxpayers or agencies and certainly not for federal employees. I think that it allows contractors to sell services with lots of unnecessary bells and whistles to the Federal Government at a very comfortable profit margin.

I think that the standard of low cost, technically acceptable allows the government to get the quality it needs. The technically acceptable standard requires the government to make sure that any contractor that gets an opportunity to bid is able to perform the work satisfactorily and has the wherewithal to fulfill the contract.

After that, it is up to the agency to decide the specifications, including the quality they need. And then after that, they should be able to pick the provider who can perform at the lowest cost. But that is not necessarily the most profitable version for the contractor.

Mr. WAGNER. Mr. Ortiz, may I add something to that?

Mr. ORTIZ. Sure. Yes, sir.

Mr. WAGNER. My understanding is the new revisions do not require best value. What they do is they open up the FAR process which allows a whole suite of ways to evaluate a contract. In the acquisition strategy, if the agency determines that for whatever they are buying low cost, technically acceptable is the most appropriate way to set the standard for the procurement; that is the way it will go.

And there are many contracts that may very well indeed go that way. What it allows is if under this particular procurement whatever it is they are buying, they may want innovation, and they may want to determine the competition on best value, they may slide to a best value scale and use that and put that out as the evaluation factors during the procurement. That also allows every competitor, including the public sector team, to provide that innovation and to offer those things in there. And it allows the agency to make those cost technical tradeoffs.

But, again, cost is going to still be by far probably one of the largest determining factors on a bid. So it is not just moving to best value. It allows a range of things, depending upon the type of service that the particular agency is buying and what they think is the best way to make a decision.

Mr. ORTIZ. Thank you. My time is up, Mr. Chairman.

Mr. HEFLEY. Thank you.

Mr. Taylor.

Mr. TAYLOR. I am just curious. I would like to restate the question of veterans' preference. When firms are allowed to contract for what government employees used to do, to your knowledge, are they held to the same veterans' preference requirements as the Federal Government had?

Mr. WAGNER. Sir, we have, usually under any procurement, there are varying requirements for sub-contracting and hiring as well. There may be a percentage of how many small businesses we

must contract to. There may be a preference for veterans' owned businesses.

There may be small disadvantaged business, women owned business requirements. There are any number of requirements that we have to comply with in bidding on that. And there may be indeed—it depends on each procurement. They are usually in the request for proposal (RFP). And they will spell out what the requirement is. And they vary contract by contract.

I might add that if, you know, the work stays in-house, you do not have those small businesses and those small disadvantaged businesses, by the way, getting the work that we normally sub-contract through because it all stays in-house with the private sector.

Mr. TAYLOR. So to clarify, there is no veterans' preference? If you are telling me it varies from time to time, there must not be one.

Mr. WAGNER. No. I am saying there is. I am saying there is on individual contracts. They will insert the veterans' benefit requirement in our contract. Yes.

Ms. SIMON. Mr. Taylor.

Mr. WAGNER. So we do comply with it.

Ms. SIMON. Mr. Taylor, to answer your question, I think that it is certainly not required by law. It can be written into any contract, or it can be absent from a contract. It only exists to the extent that it is written in a contract.

Mr. TAYLOR. Okay. It varies from contract to contract, is what you are telling me?

Ms. SIMON. That is right.

Mr. TAYLOR. As opposed to being universal within government service? A number of us have had problems with the DOD bundling construction contracts to the exclusion of contractors who, say, perform work for \$15 million or less. And the question was raised by the chairman as to whether or not all this talk of opening up to competition would go by the wayside if indeed these services were bundled as well. What has been the experience thus far?

Ms. SIMON. Well, I think that the issue of best value is certainly relevant to all the players in the bundling, debundling debate because best value can allow a contracting officer, either consciously or unconsciously, intentionally or unintentionally, to include evaluation factors that only large contractors can meet.

In addition, under best value, the agency does not have to reveal the relative weights of each of these factors and sub-factors until after the proposals have been submitted. So competitors are unaware of the standards on which they are going to be judged until after they have submitted their proposals.

And this is a way that if the evaluation factors included were such that they favored particular large contractors and made it impossible for a small contractor who was unaware of the contracting officer's predilection for certain subjective sub-factors that he may introduce later on in the evaluation process, it will exclude those small businesses from ever having the opportunity to really win a contract under best value.

Mr. WAGNER. If I can add that there have been a number of large A-76 competitions out there. I think they attract attention because they are large. But as Ms. Styles pointed out, of those that have been won by the private sector, 60 percent of them have gone to

small businesses. So they have actually won more than the large businesses out there.

Mr. TAYLOR. And in this instance, the definition of small business is what?

Mr. WAGNER. It depends; my understanding of the way the Small Business Administration does it for service contracts depending upon the particular industry is it is an annual income for the particular company. It may be \$20 million for that particular type of service business that they are in. Let's say, for example, anything lower than that in terms of annual income, that business might be considered small. But it has different scales for different service sectors.

Mr. TAYLOR. Okay. Thank you, Mr. Chairman.

I am just curious. Do you have any knowledge of requirements that would fall into the category of employers' support for Guard and Reserve that are included in these contracts? Are there any requirements to, say, either match the pay or pay the difference in pay that a Guardsman and Reservist would have suffered by being involuntarily activated? Is there anything like that happening now?

Mr. WAGNER. I do not know of any that are in our contracts. But I will go back and check to see if we have ever had contracts that do require that.

Mr. TAYLOR. Okay. Thank you. I would appreciate that.

Mr. WAGNER. Yes.

Mr. HEFLEY. Mr. Marshall.

Mr. MARSHALL. Thank you, Mr. Chairman.

Mr. Wagner, I guess I will ask you what I asked the previous panel. And that is, how do you define inherently governmental or core?

Mr. WAGNER. It is certainly a government decision on how they do. But I do think it is something that is so inherent and unique to the government that there is a requirement for them to do it. Certainly war fighting becomes the obvious example on that.

Making decisions on contracts, paying contracts, Ms. Styles brought those issues up. There can tend to be sometimes an overlap. You can have a number of commercial activities, too, to get on the other end and decide that they are commercial. But there may be a reason not to compete those contracts for potential outsourcing because they may be positions that the particular agency needs.

An example that comes in my mind is seashore rotation for people on shipboard that may be in a particular commercial activity, maybe a cook onboard ship that comes in and they need to have positions at the base for him to continue his skills and hone them in those seashore rotation billets, as the Navy likes to call them. So it is hard, I think, to draw a hard and fast line.

There are some items that certainly fall on one side or the other. War fighting and grass cutting always tend to be at the end of the spectrum. When you do get into the middle, there can be some tough decisions. But those are agency decisions, I think, individually that say what is, you know, core to our agency, and what is it that we need to do ourselves and cannot allow to be outsourced.

Mr. MARSHALL. As a representative of Johnson Controls, your expectation is that if the A-76 process is modified as proposed, your

company stands to probably get business from the Federal Government?

Mr. WAGNER. Yes, sir. We have bid on a number of A-76's. We have, frankly, probably lost more than we have won.

Mr. MARSHALL. I think you would do better under the new regime.

Mr. WAGNER. Pardon me? We think the process is more fair. I do not know if we will win more. I think that has yet to be seen. I would say that we are pretty much tailed off on bidding them now because of the process. The key, I think, is that we will now start to bid again.

And that is good for the government because we will provide competition. And I know other companies will bid as well. Whether we win more now under the new process, I cannot say. And frankly, I think the statement of industry winning 90 percent of these is way out of bounds. I think that is kind of ridiculous.

Mr. MARSHALL. Well, I did not make the statement.

Mr. WAGNER. No. I know you did not.

Mr. MARSHALL. I am repeating statements that I have heard.

Mr. WAGNER. And I am merely commenting on my opinion on the statement.

Mr. MARSHALL. And I think that actually the statement was made by an industry representative. So, I mean, I am not quite sure.

Mr. WAGNER. And if I knew who that was, I would say the same thing to him.

Mr. MARSHALL. I think I can get my hands on it. I would be happy to provide it to you.

Mr. WAGNER. Sure. I just do not agree with it. That is my point. I know you were not making that statement.

Mr. MARSHALL. I understand. Do you have any idea in mind concerning what is the appropriate balance here? Should industry prevail 50 percent of the time, 75 percent of the time, 25 percent of the time?

Mr. WAGNER. I do not know if anyone can say. I think you really have to say that there is not a number that makes sense or winds up being fair. I think what you have to do is look at every instant competition and say did we have adequate competition.

Did industry come to the table and put in bids? Did the public sector have a chance to put in a viable bid?

At the end of the day after we had a fair competition, did the government get the best deal in and of itself? And you have to look at every competition. I could not hazard a guess, you know, after you tallied them up after a couple of years what the right answer should be as a percentage.

Mr. MARSHALL. The few studies that I have looked at—and I cannot claim to be an expert here; I certainly do not have time to become an expert. But the few studies I have looked at have suggested that the lion's share of the savings come in personnel costs and that part of the savings, often as lower wages for the replacement employees and less benefits perhaps what my colleague from Mississippi is identifying, those sorts of savings. Johnson Controls, I believe, at least as a corporation—I did business with you while I was the mayor of Macon; all of your employees have benefits.

Mr. WAGNER. Yes.

Mr. MARSHALL. And I think they are pretty good benefits if I recall correctly.

Mr. WAGNER. Yes, sir.

Mr. MARSHALL. Should we have in this process a requirement that the employees who replace federal employees by contractors have similar benefits to the employees that they are replacing and that the competing contractor meet other requirements that the Federal Government must meet with regard to Guard service, et cetera? Should we put that in there as part of the contracting process, the competition process?

Mr. WAGNER. Sir, those requirements are already there in terms of what needs to be paid. Again, the Service Contract Act and the Department of Labor requires—what they do is set in the area prevailing wage rates. And they go out and do studies to determine what is the prevailing wage rate.

And they try to determine that the wage rate for that particular skill set marks the prevailing wage rate in the area. And they put a certain number on in terms of what benefits we should pay and the benefit package. That becomes the floor to which most contractors bid. Because if you bid much higher than that, you are probably going to lose.

The point I tried to make earlier was if there is a concern over the wages we pay, I truly think we need to look at the wage determinations that the Department of Labor puts in in those areas as well as the benefits package, which personally I think is too low. Right now with the way that health care costs are going up, I think that the benefit package that the Department of Labor has put out is inadequate.

Mr. MARSHALL. Suppose that the federal job that you are considering for competition is in an area of the country where that particular kind of worker typically does not receive benefits. The wage rate offered by the federal job is roughly about the wage rate that is offered in the comparable labor market. But the benefits are simply not there.

Should, in the contracting process, there be a requirement that whoever comes in and competes offers benefits like the benefits that are offered to the federal employee or given to the federal employee?

Mr. WAGNER. The Department of Labor requires us to put a benefits package together and determines how much per hour per employee in terms of benefits that we pay. And we do pay our employees' benefits. And at times, I am happy to say in the collective bargaining agreement that we have, we put together better packages sometimes.

Ms. SIMON. If I may? The Economic Policy Institute has conducted the only study that I am aware of with regard to what federal contractors pay their work force, both in comparison with what federal employees are paid and by comparison with what the law requires. And although Mr. Wagner is exactly right that Johnson Controls is a very good contractor and unionized in many places and does have collective bargaining agreements that help guarantee its work force is adequately compensated, overall in the Federal

Government, less than a third of contract workers are covered by the Service Contract Act.

And as Mr. Wagner was indicating, even those covered by the Service Contract Act are often paid less than what we call living wage, less than \$8 an hour partly because of the inadequacy of those surveys conducted by the Bureau of Labor Statistics (BLS) and the age of the data that is used. But two thirds of all workers under federal contracts are not protected by the Service Contract Act, are not benefiting from these standards that Mr. Wagner is discussing.

Mr. WAGNER. If I can add one study that was done recently? I believe it was last year by the General Accounting Office on the wages and benefits. And it compared the wages and benefits to Service Contract Act employees and the federal employees. And I would be happy to send that to you, a copy of it.

It basically came and said that sometimes wages go up when things are outsourced. Sometimes they go down. But at the end of the day, I think the GAO determined that there was not a discernible difference between the wages paid to service contract employees and the Federal Government employees.

Ms. SIMON. Well, the Service Contract Act covers mostly blue collar trade jobs. And what we are talking about in the privatization initiative that this Administration has been pushing is 850,000 jobs. That is many, many jobs that are not blue collar, grass cutting jobs.

And, consequently, we can ask—and I think that this hearing has elucidated the question of whether it is appropriate for the Federal Government using taxpayer dollars either to underpay workers doing government work, people who are in the skilled trades, for example, and then also, simultaneously, pay enormous salaries that go way beyond what federal employees make, what Members of Congress make, what the Vice President of the United States makes and everything in between.

In some cases, people doing government work at the same kind of government work are going to be paid much, much higher salaries than the Congress has determined is appropriate for people doing government work when they work directly for an agency.

Mr. HEFLEY. I am sorry. I am going to have to go to Mr. Abercrombie so we can get him in before we get out of here.

Mr. MARSHALL. Thank you, Mr. Chairman. Sorry.

Mr. HEFLEY. Mr. Abercrombie.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

Ms. Simon, I am interested in this statement that was made by Ms. Styles before when I—and I did not get quite much of a chance to finish it up there with Mr. Wynne. One of the things she said was when I mentioned to them about managers, she said the managers have not gone to the employees on how this can be made better.

I am not sure who she—maybe that is what they do in the Office of Management and Budget, maybe they do not go to their employees. But I can tell you, and I wonder if your experience is similar. At Pearl Harbor, for example, the employees have spent years trying to improve their efficiency, gone over and over again with proposals to management, most of which have been ignored.

Is it your experience and would you say that if we did go to the employees in the first place, we might not even be in this stage?

Ms. SIMON. Well, I think that the issue you raise is what federal employees find most frustrating and insulting about the privatization quotas that the Administration has imposed on every agency across the board, privatization quotas.

As Mr. Hostettler discussed earlier in the hearing, at Crane, they did Business Process Reengineering and saved the government a lot of money. But the A-76 rewrite and the President's Management Agenda together have excluded all methods for increasing the productivity and efficiency of government services. They have excluded everything except privatization. Privatization is the, you know, one-size-fits all tool.

Mr. ABERCROMBIE. So they are not looking to their employees first?

Ms. SIMON. On the contrary. Federal employees have been deprived of any kind of opportunity to work in partnership with agency management. And they have been told that there is really only one tool in the manager's toolbox under this Administration. And that tool is privatization.

Mr. ABERCROMBIE. Yes.

Mr. Wagner.

Mr. WAGNER. Yes. Could I add to that, sir?

Mr. ABERCROMBIE. Certainly.

Mr. WAGNER. I would suggest that the competitive sourcing process is precisely that opportunity. It is called the most efficient organization where those in-house employees do get the chance to find those solutions, to bring those innovations and to bring those cost savings ideas to bear.

Mr. ABERCROMBIE. Well, maybe so. Let me put it this way. If the public employees win, they can be appealed. If the private sector wins, there cannot be an appeal. The question I wanted to ask you was—and I am fully prepared to accept your representation. In fact, Ms. Simon, if I am correct, indicated that she is aware of the standards that your company sets. Would you advocate that any private sector competition has to meet the same standards that your company meets?

You are obviously not afraid to have a union try and organize your business. You are not afraid to pay or reluctant to pay health benefits. You are not reluctant to establish pension requirements and so on. Would you say that the standards your company sets, at a minimum, ought to be the standards that any other company competing, either for the public sector or against you, ought to meet?

Mr. WAGNER. I would say, sir, when we do compete for federal contracting, we are competing against companies by and large or they have to go to the standards set by the Service Contract Act and the Department of Labor's wages and the benefit packages that are required there. Also, if they have won, certainly the National Labor Relations Act allows the employees to unionize.

I think every company should, abide by that act and the rules and the ability for the employees to unionize. And if they voted in a union, they should negotiate a good faith collective bargaining agreement. Yes, sir.

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman.

Thank you, Mr. Wagner, Ms. Simon.

Mr. HEFLEY. Thank you. And thank both of you for being here today, for your testimony. It is quite helpful. And we appreciate you taking the time to do it.

Mr. WAGNER. Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you very much. The committee stands adjourned.

[Whereupon, at 6:04 p.m., the subcommittee was adjourned.]

A P P E N D I X

MARCH 25, 2003

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 25, 2003

STATEMENT OF ANGELA B. STYLES
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
BEFORE THE
MILITARY READINESS SUBCOMMITTEE
COMMITTEE ON ARMED SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 25, 2003

Chairman Hefley, Congressman Ortiz, and Members of the Subcommittee, I am pleased to have this opportunity to discuss competitive sourcing and the proposed improvements to Office of Management and Budget ("OMB") Circular No. A-76 ("Circular A-76"). My comments apply government-wide, but have been tailored to reflect the experiences, requirements, and needs of the Department of Defense (DoD).

As most of you know, competitive sourcing is a government-wide initiative to encourage competition for the performance of government activities that are commercial in nature. Using OMB Circular A-76, departments and agencies have been asked to "determine whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel." Competitive sourcing is a means to an end, with the means being public-private competition and the end being better management of our government, better service for our citizens, and lower costs for our taxpayers.

I cannot emphasize enough that competitive sourcing is not about outsourcing; nor is it about downsizing the workforce. Rather, competitive sourcing is about creating

incentives and opportunities for efficiency and innovation through competition. No one in this Administration cares who wins a public-private competition. But we very much care that government service is provided by those best able to do so in terms of cost and quality, be that the private sector or the government itself.

After nearly two years of hard work with the agencies, I am pleased to see a large number of our federal managers accepting the difficult challenge of building an infrastructure to identify commercial activities, planning for their performance, and, for the first time, institutionalizing public-private competition to address those needs. While creation of an infrastructure is just one step, it is a critical step. Many of the processes relied on until now are rooted in long-outdated management ideals that have permitted vast numbers of our commercial activities to remain insulated from competition. As our mindset transforms from one that resists competition to one that embraces the value competition generates, agencies should find themselves well positioned to achieve a mix of government and contract support that is optimal for mission success.

Progress is proceeding according to plans at many of the agencies we are tracking in the Budget (i.e., the "scorecard agencies"). We are starting to see real management advances in a few instances. DoD has the largest and most experienced infrastructure in the federal government for conducting competitive sourcing, which is governed by OMB Circular A-76. The Center for Naval Analysis and other evaluators have reviewed the results of DoD's competitions and found that: (1) the net long-term savings are significant and permanent; and (2) few federal employees are worse off after competition.

DoD seeks to improve the "tooth-to-tail" ratio through competition of commercial activities, which will allow the department to shift civilian and military members to the

core functions of the department, particularly war-fighting and war-support functions. DoD is committed to reviewing half of the 452,000 positions in commercially available activities. The Department is well on the way to competing a total of 67,800 positions during FY 2002 and 2003. DoD estimates the announcement of new A-76 competitions for approximately 10,000 positions in FY 2003 and at least 10,000 in FY 2004. A major DoD review of A-76 and other competitions by each Military Service and Defense Agency is scheduled this year so that the President's FY 2005 Budget can present how DoD will achieve this Presidential Management Initiative. Based on DoD's experience with public-private competition under OMB Circular A-76 and the Department's well-established infrastructure, these goals are practical, achievable, and, in the long run, will save the taxpayers billions of dollars.

Action is occurring at other agencies as well. For example, the Department of Veterans Affairs is opening up the activities of 52,000 employees (primarily ancillary support functions) to competition over the next five years -- initiating studies of 25,000 of them in 2003 alone. At the Federal Aviation Administration, about 2,900 federal flight services personnel are participating in a public-private competition. Among other duties, these federal personnel provide weather briefings to pilots, a function that no major airline finds efficient to perform in-house. Similarly, the Department of Energy has started public-private competition for a variety of functions (such as computer personnel, graphic designers, and financial services personnel) and locations nationwide.

Despite progress, overall use of competitive sourcing remains weak. This is not surprising when considering that the current processes governing sourcing decisions are time consuming and unnecessarily complicated. Therefore, OMB is committed to

significantly improving how agencies determine whether commercial activities will be performed by public or private sources.

Last November, OMB proposed major revisions to OMB Circular A-76. The proposed changes would provide for processes that are more manageable, more competitive, more even-handed, and more results-driven. These objectives would be accomplished by:

- helping agencies more easily distinguish between commercial and inherently governmental activities by offering a more concise definition of "inherently governmental" and rescinding the more complex description currently relied on;
- making processes simpler and easier to understand, including appropriate use of certain well-tested practices in the Federal Acquisition Regulation (FAR);
- more fully accommodating a program's need for best value and innovation, while still requiring cost to remain a factor in all competitions and the deciding factor in many competitions;
- incorporating appropriate mechanisms of transparency, fairness, and integrity (e.g., by separating the team that is formed to write the solicitation from the one established to develop the agency tender) so that competitions occur on a level playing field that results in performance by the best source;
- ensuring that sourcing decisions are made in real time by imposing deadlines that would reduce the cycle time from the current delay-plagued three years (on average) to one year; and
- improving post competition oversight so that selected sources, whether from the public or private sectors, make good on their promises to the taxpayer.

With regard to the first element, in particular, which involves distinguishing the universe of activities that may be eligible for competition from those that would not, I would emphasize that we are focused *strictly* on commercial functions, whether they be specialized functions or more routine functions such as hanging dry wall or mowing the lawn. I am puzzled to hear statements that the Administration is planning to contract

functions intimately related to the public interest, such as determinations on the content and application of regulations. These types of functions must be performed by public employees and we will continue to depend on our able workforce to execute these important responsibilities on behalf of our citizenry. This notwithstanding, we will still require agencies to identify their inherently governmental functions to ensure activities are properly characterized. By doing so, commercial functions that should be considered for competition will not remain insulated from the savings that a fair competition can yield. At the same time, we will not force agencies to pursue competitive sourcing for competition's sake. We appreciate that each agency has a unique mission and workforce mix and will continue to work with agencies in tailoring competition plans accordingly.

We have been working aggressively to consider the more than 700 comments that were submitted on the proposed rule. These comments are posted on the Internet at <http://www.omb.gov> and a discussion of their general disposition will be provided in the preamble to the final circular.

In analyzing the public comments, we have been keeping an especially watchful eye out for areas where processes may cause results that fall short of expectations -- e.g., instances where the process unnecessarily constrains management's ability to fully consider and compare options. In this regard, a number of commenters pointed out that administrative convenience may drive agencies to pursue direct conversions even where in-house providers may be the better alternative. We are examining the viability and fairness of a process that would allow for a highly simplified and streamlined consideration of public and private sector sources.

We are aiming to complete our review of public comments shortly so that agencies may soon take advantage of our transformed processes. While final decisions have not yet been made, you should anticipate that the major elements I described a moment ago will be incorporated, in appropriate fashion, in the final revisions to the circular.

Of course, our commitment doesn't end with publication of the circular. This is just a beginning. We will continue to work with agencies in crafting appropriate competition plans. Equally important, we will track results through our scorecard so that successes are promoted and shortfalls corrected.

Conclusion

We are asking federal agencies to reconsider how they accomplish their missions. We are also asking them to test assumptions about the best provider through the competitive process. Competitive sourcing is laying the groundwork for improved mission performance through quality service at the lowest possible cost. Like any other effort that seeks to fundamentally transform the way we do business, this initiative has its challenges. But if we are steadfast in our commitment to competition, which lies at the heart of competitive sourcing, we will no doubt deliver the quality service our war fighters need and taxpayers across government deserve.

This concludes my prepared statement. I would be pleased to answer any questions you may have.

**FOR OFFICIAL USE ONLY
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HOUSE COMMITTEE
ON ARMED SERVICES**

STATEMENT BY

THE HONORABLE MICHAEL W. WYNNE

PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY AND LOGISTICS

BEFORE THE

MILITARY READINESS SUBCOMMITTEE

COMMITTEE ON ARMED SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

SECOND SESSION, 108TH CONGRESS

ON OUTSOURCING, PRIVATIZATION AND A-76 ISSUES

March 25, 2003

**FOR OFFICIAL USE ONLY
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HOUSE COMMITTEE**

Chairman Hefley, Mr. Ortiz and distinguished members of the committee; I am pleased to have this opportunity to appear before you today to discuss the Department's competitive Sourcing program and upcoming plans relative to the proposed revision to OMB Circular A-76.

The Department must continue to do business better, faster and at reduced cost to maintain our focus on readiness. In order to focus on what we do best - - our core mission activities - - we must become more efficient in our support, or non core, services. When subjected to competition, our workforce, as dedicated as they are, as well as other service providers, can and do provide support services at not only a lower cost, but with greater speed and efficiency.

The Department of Defense has, by far, the most experience in the federal government in competing its support Services using the public-private competition process defined by OMB Circular A-76. During the Fiscal Years 2000 through 2002, we completed approximately 570 A-76 competitions with about 56,000 positions, and we are scheduled to complete A-76 competitions on an additional 15,000 positions by the end FY03. The 570 completed A-76 competitions have resulted in either a contract or in-house decision that will generate over 5 billion dollars in savings (cost avoidance) over the life of the contracts, normally about 5 years. Furthermore, our studies verify these savings are real and persist over the entire performance period. These savings and efficiencies are most often attributed to the A-76 process, but in reality they are a result of the competition, not the specific process.

In fact, the old A-76 process was often lengthy, complex and frustrating for all involved. That very frustration is, in part, an evolutionary outgrowth of many attempts,

over time, to address legitimate concerns to protect the interests of all participants: government employees, private sector competitors, federal managers and taxpayers. But, as many witnesses testified during the hearings of the Commercial Activities Panel, the old A-76 process had become too lengthy, adversarial and distrusted by all participants.

The Office of Management and Budget (OMB) has now issued a proposed revision to OMB Circular A-76 to address recommendations made by the Commercial Activities Panel in May of last year. We believe the proposed revision offers promising and overdue improvements to the A-76 process, especially with respect to aligning it more closely with procedures already used under the Federal Acquisition Regulations. The proposed revisions were published in December for review, and we have supplied comments as have all interested parties. Let me mention a few key aspects of the proposed revision:

- We support the intent of the proposed 12 month time limit. The length of the existing process must be reduced to minimize the anxiety and uncertainty concerning the outcome. Our experience indicates some our larger and more complex competitions may take longer and we understand flexibility exists to identify, upfront, those that would exceed 12 months.
- We also support the concept of the Agency Tender Official (ATO) to represent the government bid. We are working to decide at what level this official will be provided. Additionally, the Department's General Counsel has expressed concern with what the appropriate source of legal advice to the Agency Tender Official should be to maintain appropriate separation between

the government bid and the source selection process. Numerous new responsibilities like these are created by the new process and must be worked out once the Circular is finalized.

- We recognize that accurately costing the government proposal remains a major challenge under the proposed new process. The Commercial Activities Panel recognized the Department's costing model as an example for use in all federal competitions and we have continued to improve this important tool. OMB's proposed revision to Circular a-76 is completely consistent with our costing model but will require updates to our software to reflect changes in the process, as well as terminology change. We are working closely with OMB and other federal agencies to ensure these updates can be promptly completed following release of the final revision to the Circular.
- One of the proposed competitive procedures would authorize agencies to conduct cost-technical tradeoffs, to select the source that would provide the best value in public/private competitions. Just as we seek to conduct these tradeoffs in our normal private sector acquisitions, we would like to employ them in the A-76 process as well. The Department is limited in this regard by our statutory requirement to make decisions on a cost only basis. We have submitted a proposal seeking legislative seeking relief from the restriction of USC 10 2462. All too often we receive little or no private sector interest when we compete our commercial activities because our solicitations invite low cost proposals using old business processes. This discourages innovation in both public and private sector proposals.

We will continue our dialog with OMB as they finalize the Circular and expect the final version to provide a fresh start in our attempts to use public private competition to improve our support services.

The Department has long been the leader in the federal government in competing commercial functions with the private sector under OMB Circular A-76 and fully supports the President's Management Agenda for competitive sourcing. OMB identified for DoD a long-term competition goal for 226,000 positions (50% of the FY2000 FAIR inventory of 452,000 positions). DoD is on track to meet our interim 15% goal of completing A-76 competitions on 67,800 positions by the end of FY 2003. The President's FY 2004 Budget included DoD's estimates that the Department will announce A-76 competitions for around 10,000 positions in FY 2003, and A-76 competitions for at least 10,000 more positions in FY 2004. These additional announcements will assist in meeting the completion goal for the remaining 35% of the inventory (158,200 positions). This remaining 35% will be met using both A-76 competitions and "Alternatives to A-76" developed in conjunction with our core competency review initiated by our Business Initiatives Council. The BIC is charged with changing our business processes to improve mission effectiveness and reduce costs. While the Department continues to conduct A-76 competitions, we believe the Department and taxpayers are best served by employing a wide range of business tools designed to make our operations more efficient. The respective Military Departments are developing plans for submission with the FY 2005 program to meet the long term President's Management Agenda targets. The Army's "Third Wave" initiative is an

example of one such effort to explore various alternatives to A-76. The Army expects to have their core and non-core functions identified by April 2003 and will then determine specific implementation plans.

We are not standing still. As problems are identified, we are proactive in streamlining our process and improving our tools. Our knowledge management website "Share A-76" is an established tool for identifying and analyzing best practices and lessons learned from competitive sourcing studies receiving approximately 12,000 hits from visitors both inside and outside the Department. The Defense Commercial Activities Management Information System (DCAMIS) is a real time web-based tool we use to track execution of our competitive sourcing program. It gives us the ability to answer questions and make management decisions using actual execution data. We continue to seek process improvements from lessons learned and best practices.

Mr. Chairman and Committee members, thank you again for the opportunity to address these important issues with you today and I am happy to answer any questions you may have.



AFGE

Congressional Testimony

STATEMENT BY

JACQUE SIMON
PUBLIC POLICY DIRECTOR
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

THE HOUSE ARMED SERVICES
SUBCOMMITTEE ON READINESS

REGARDING

DEPARTMENT OF DEFENSE PRIVATIZATION

ON

TUESDAY, MARCH 25, 2003

American Federation of Government Employees, AFL-CIO
80 F Street, NW, Washington, D.C. 20001 ★ (202) 737-8700 ★ www.afge.org



Introduction

On behalf of the American Federation of Government Employees, AFL-CIO, which represents more than 600,000 federal employees, including 200,000 in the Department of Defense (DoD), who serve the American people across the nation and around the world, I thank you, Chairman Hefley for the opportunity to testify on behalf of AFGE today before the House Armed Services Subcommittee on Readiness. And AFGE always appreciates the opportunity to testify before Ranking Member Ortiz, who takes such great interest in federal employee issues.

Over the last several years, AFGE has strived to reform federal privatization policy and thus promote the interests of warfighters and taxpayers as well as federal employees. In fact, last year, an amendment offered on the floor to the defense authorization by Senator Edward Kennedy (D-MA), which came within one vote of passing and was strongly supported by AFGE, would have ensured real and equitable public-private competition under an objective, cost-based process for work performed by DoD civilian employees, DoD contractors, as well as at least small fractions of work not yet performed by either workforce. The Kennedy Amendment would have also ensured greater accountability through the establishment of an inventory to track the cost and size of DoD's contractor workforce.

AFGE will continue to work with other unions and public interest organizations as well as our Republican and Democratic friends in both chambers of the Congress to enact the significant changes in law necessary to improve the delivery of services for warfighters and reduce expenses for taxpayers, including those called for in the Truthfulness, Responsibility, and Accountability in Contracting (TRAC) Act, which claimed the cosponsorships of 215 House and Senate lawmakers in the 107th Congress.

Today, however, AFGE will limit our written testimony to six main topics:

1. the Office of Management and Budget's (OMB) privatization quotas,
2. the rewrite of the OMB Circular A-76 privatization process,
3. the threat to use "best value" in DoD's public-private competitions,
4. the threat of the Army's "Third Wave" privatization initiative,
5. the threat to eliminate in-house depots and arsenals, and
6. the threatened introduction of the Service Acquisition Reform Act.

1. OMB privatization quotas

Although well over one-half of all Congressional lawmakers have emphatically repudiated the essence of the Administration's privatization policy—261 in the House of Representatives and another 48 in the Senate—the infamous OMB privatization quotas are still with us. We're grateful for the strong support for last year's bipartisan floor amendment to the House Treasury Appropriations Bill to free agencies from the OMB privatization quotas from all House Democrats who voted as well as 52 House Republicans, including Armed Services Committee Chairman Duncan Hunter (R-CA), and several members of the Readiness Subcommittee, including Representatives Walter Jones (R-NC), Robin Hayes (R-NC), Randy Forbes (R-VA), and John McHugh (R-NY).

However, because of the narrow defeat of an identical amendment in the Senate earlier this year, agencies, regardless of their needs or missions, are being forced by OMB to review for privatization, either with or without public-private competition, at least 15% of the positions listed on agencies' Federal Activities Inventory Reform (FAIR) Act inventories. According to the November 14, 2002, draft proposal to rewrite the A-76 process, it is ultimately the Administration's goal to review every single position on every single agency's inventory, which works out to at least 850,000 positions.

I would like to make these points about the OMB privatization quotas:

- A. The use of the term "competitive sourcing" to describe the OMB privatization quotas betrays either bias or ignorance. OMB explicitly encourages agencies, including DoD, to give work performed by federal employees to contractors without public-private competitions, either through direct conversions or privatizations. According to the Administration's FY04 budget proposal, some agencies, including the General Services Administration and the National Aeronautics and Space Administration, are using direct conversions exclusively to hit their OMB privatization quotas. Other agencies are using direct conversions extensively to hit their OMB privatization quotas. There is nothing "competitive" about this corporate welfare-style privatization.

The "competitive sourcing" (sic) initiative is not about saving money for the taxpayers; it is about replacing federal employees with contractors and shifting money to the private sector. The Administration's refusal to help already overwhelmed agencies do a better job of conducting competitions fairly and administering their contracts satisfactorily is highly illustrative of this point. The threatened shift to a loosey-goosey "best value" competition process in which contractors can submit bids that are less responsive to the terms of the solicitation and more expensive than bids submitted by federal employees, but still win contracts is also illustrative.

Office of Federal Procurement Policy (OFPP) Administrator Angela Styles, who is responsible for the implementation and enforcement of the OMB privatization quotas, now, according to *Government Executive*, must **"caution against judging the (privatization quotas) program on savings alone."** (Emphasis added.) According to the March 2003 edition, Ms. Styles insists that threatening to privatize the jobs of 850,000 federal employees, either with competition under a privatization process that is being rewritten so that it becomes more pro-contractor, or without any competition whatsoever, "can have a positive effect on morale, and could even help attract young people to government service." Defending the indefensible can often require intelligent people to say the most preposterous things. However, as savings from the "competitive sourcing" (sic) initiative fail to materialize, we can expect other highly subjective, to say the least, and conveniently unquantifiable rationales to be served up for our consumption in the months ahead.

Ms. Styles apparently considers public-private competitions to be intrinsically virtuous, whether or not money is actually saved—but only when the work in question is being performed by federal employees. While OMB is forcing agencies to review for privatization 850,000 federal employee positions, only a tiny handful of contractor positions will be reviewed for possible insourcing, even though contractors acquire and retain almost all of their contracts without ever having to compete against federal employees.

The Department of Housing and Urban Development (HUD) is one of only two agencies that will be reviewing work performed by contractors for possible insourcing. In fact, HUD will get credit towards its privatization quotas by reviewing work performed by contractors in the area of home loan programs. DoD, however, is not reviewing a single contractor job for insourcing, despite a much larger and more unaccountable contractor workforce. This dereliction becomes even more difficult to comprehend when we remember that 10 U.S.C. 129a requires DoD "to consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job" and DoD, in the person of Undersecretary of Defense for Acquisition, Technology and Logistics E.C. "Pete" Aldrige, said in 2001, that "we (may) have already contracted out capabilities to the private sector that are essential to our mission..."

- B. As implemented, the OMB privatization quotas have profoundly ugly class, race, and gender biases, and are systematically encouraging agencies to place target signs on the backs of employees who are lower-ranking, female, and/or members of minority groups.

For example, in the Department of Veterans Affairs (DVA), it is the employees in building maintenance, food services, and laundries who will be the first targets reviewed for privatization, rather than health care professionals. In fact, OMB has directed that all agencies aggressively review for privatization

the jobs of blue-collar, clerical and maintenance workers. In the Department of Labor's Employment Standards Administration's Office of Federal Compliance Programs, all but two of the 72 employees categorized as candidates for privatization are GS-9 or lower. All of the employees categorized as inherently governmental are GS-10 or higher.

DVA managers have publicly expressed concern about the impact of the OMB privatization quotas on the hard-won diversity of the agency's workforce. According to a DVA manager quoted in *Federal Times*, "(A)ny significant effort to outsource jobs (in the functions listed above) will have huge diversity implications." Moreover, the Department of Transportation, in its comments on OMB's A-76 rewrite, reported the disproportionate impact of the privatization quotas' direct conversions on women and minorities. A consultant who has run federal public-private competitions for more than 20 years told *Government Executive* that, "(I)n looking at the affected workforce, it is disproportionately minority and female."

Whether or not it is one of the intentions of those who designed the Administration's policy, it cannot be denied that the consequences of the OMB privatization quotas will ultimately have the effect of turning back the clock to the days when federal agencies were managed and staffed primarily by white males. This is a concern that has drawn too little attention. Thanks to the hearing you are conducting here today, Chairman Hefley, perhaps we can rectify this oversight.

- C. Although there was an attempt to portray the final result of the FY03 effort to free agencies from the OMB numerical privatization quotas as a compromise, such is not the case. The Administration agreed that numerical privatization quotas are bad public policy—except when they are based on the Administration's own research and analysis. Report language requires OMB to submit a report that provides such research and analysis.

The role of the General Accounting Office (GAO) in the defeat of what began as a bipartisan effort to end the use of numerical privatization quotas is disappointing. On the very day, July 24, 2002, that the House of Representatives passed an anti-numerical privatization quotas amendment, by a vote of 261-166, the Comptroller General went out of his way to criticize the effort in the media.

Later, he elaborated on his criticism in an August 9, 2002, letter to a Senate lawmaker, in which he insisted that the amendment would be a "blanket prohibition on the use of goals." As even the most cursory reading of the language would have revealed, the amendment was in no way a "blanket prohibition." Rather, it would have prevented only the use of numerical privatization quotas. Agencies could have used research and analysis to establish non-numerical goals if the amendment had been enacted. In fact,

by preventing political appointees from plucking numbers out of thin air and then imposing them on helpless agencies, the amendment would have actually promoted the use of research and analysis in the establishment of goals.

Moreover, it is well understood by any observer of the federal privatization scene that the OMB privatization quotas are not based on any research and analysis. Representatives from GAO were in attendance, and one even testified, at the March 6, 2002, hearing of the Senate Governmental Affairs Committee hearing in which Ms. Styles said that the privatization quotas had been established by the President himself—who is unlikely to have had the time to perform any research and analysis. Indeed, the Comptroller General, in his August 9 letter, correctly asserted that he had “seen no evidence to indicate that its numerical FTE goals were based on considered research and sound analysis.” Unfortunately, the inclusion of a vague research and analysis requirement gives the Administration an obvious out and renders the amendment unenforceable.

Finally, the GAO’s recommendation that any prohibition on the use of numerical privatization quotas include an “escape clause” for those quotas that are based on research and analysis was strangely incomplete. The elaboration provided in the letter was vague management-speak: “a review of historical data and sourcing activity in the public and private sector combined with an analysis of current and emerging market trends...” However, the GAO’s recommendation did imply that the OMB privatization quotas should take “into account the capacity of agencies...to conduct public-private competitions.”

Unfortunately, some Senators accepted the GAO’s fundamentally flawed criticism as a rationale for voting against the anti-numerical privatization quotas amendment. Consequently, agencies are still being forced to review for privatization, regardless of their needs and missions, tens of thousands of federal employee jobs, either with or without public-private competition.

D. I will conclude this section of my testimony by providing you with my own thoughts on how to reform the OMB numerical privatization quotas so that agencies can, if appropriate, establish non-numerical, agency-specific, equitable sourcing goals:

1. Don’t use numbers. Numbers are a lazy person’s short-cut, an unworthy alternative to conducting the research and analysis necessary to establish goals that promote good public policy, as opposed to narrow private interests. AFGE criticized the disastrous use of numbers to manage the DoD civilian workforce during the Clinton Administration. And we’ll criticize the Bush Administration when it perpetrates the same blunder in the context of DoD privatization.

I would ask the Comptroller General to review a key passage in his own August 9 letter in which he implies that the desired "result (of a goal-setting process) would be the identification of specific functions or activities that should be subject to public-private competition." In other words, sourcing goals, he believes, should be function- or activity-based; and, of course, I would add, no numbers are needed to establish such sourcing goals.

2. Take politics out of the process. Any non-numerical sourcing goals should be designed by managers in the individual agencies, not the politicals over at OMB. Since they are closer to the action and have an institutional investment in seeing that their customers are well-served, agency managers, although far from perfect, are in a better position to establish appropriate goals that complement agencies' actual needs and missions. OMB politicals have no business in imposing privatization quotas on agencies, let alone telling managers exactly which jobs to review, as occurs regularly today. We would do well to remember that OMB's expertise is limited to the indelicate art of telling people what to do, not in actually doing something.
3. Get rid of the corporate welfare. Direct conversions and privatizations have no place in any sourcing goals. With all respect to the Comptroller General, no amount of research and analysis can justify taking jobs away from federal employees and giving them to contractors without public-private competition. That does a disservice to federal employees, taxpayers, and customers.
4. Look beyond the usual suspects so that agencies can establish non-numerical, equitable sourcing goals. DoD has three different workforces: civilian, military, and contractor. However, only the civilian and military workforces have been looked to for savings. As Army Secretary Thomas E. White, of all people, has acknowledged, "In the past eleven years, the Army has significantly reduced its civilian and military workforces. These reductions were accompanied by an expanded reliance on contractor support without a comparable analysis of whether contractor support services should also be downsized." The same is true for the rest of DoD. If HUD and the Department of Energy can review contractor work for insourcing, there is no reason DoD cannot do the same.

And just as it's important to track the work performed by federal employees, it is also important to track the work performed by contractors. This means that agencies must have contractor inventories analogous to the FAIR Act, so that managers can determine, as Army managers are currently attempting to do, what work has been privatized already,

particularly with respect to whether it is actually inherently governmental work.

5. Any non-numerical, agency-specific, equitable sourcing goals must take into account the need for a diverse federal workforce. Federal agencies should be model employers, rather than reactionary employers who use, purposefully or not, privatization quotas to roll back all of the progress made in creating a federal civil service as diverse and inclusive as the American people.
6. Non-numerical, agency-specific, equitable sourcing goals should also peacefully coexist with other, more proven techniques—from labor-management partnerships to demonstration projects to reorganizations and consolidations—to make agencies' operations more efficient. The Administration has broken with bipartisan precedent and emphasized the OMB Circular A-76 privatization process to the exclusion of all other techniques.
7. Non-numerical, agency-specific sourcing goals that are truly equitable cannot possibly be created unless both contractors and federal employees have the same rights to challenge agencies' sourcing decisions. Currently, only contractors have legal standing to take agencies to GAO and the Court of Federal Claims—and not federal employees and their union representatives. It is manifestly unfair that the Administration has unleashed a tidal wave of privatization on federal employees without making sure that federal employees as well as contractors can both have their day in court.
8. Agencies should establish non-numerical, equitable sourcing goals for one reason only: so that customers can receive better services at the lowest possible costs. Competitions are a means to an end; they are not an end in themselves. As the costs and consequences of the privatization quotas become more clear, and the resulting savings fail to materialize, OMB officials are, as noted earlier, inventing rationales for their failed policy that have nothing to do with promoting the interests of customers or taxpayers. Well, conducting competitions for the sake of conducting competitions is not acceptable public policy. As OMB officials should know, the adverse impact on workforce morale of a privatization review, as well as the commensurate adverse impact on productivity, is significant, as are the direct costs to taxpayers of privatization reviews.
9. Agencies should also be required to conduct and make public "research and analysis" before establishing any non-numerical, agency-specific, equitable sourcing goals, including:

- a. whether the agency has the in-house capability to satisfactorily perform these inherently governmental functions: conducting the competitions,¹ crafting the most efficient organization plans, and administering any resulting contracts;
- b. what experiences the agency, other federal agencies, or state and local governments have had in the past with public sector and / or contractor performance of the work in question, particularly with respect to costs;²
- c. to what extent the work has already been privatized;³
- d. whether the agency can easily reconstitute an in-house capability if the work is privatized;
- e. whether the private sector market can provide sufficient competition to avoid sole-source contracting if the work is privatized;
- f. what impact, if any, there would be on service if the contractor were to provide its workforce with inferior compensation;⁴ and
- g. what alternatives to privatization exist to make the delivery of services more efficient and what are the costs of those alternatives in relation to the cost of conducting a competition and perhaps privatizing the work.⁵

¹ According to the March edition of *Government Executive*, "No agency is implementing competitive sourcing without contractor support. **There is no expertise left in government to do these competitions,**" says one agency official. (Emphasis added.) "For niche contractors that specialize in A-76, the initiative is big business," according to one consultant. "The demand for consultant support is so great that industry is strapped to meet it," according to the consultant. "The biggest problem is finding qualified people to do the work..." Perhaps Ms. Styles meant that her privatization quotas would encourage young people to grow up and become the A-76 consultants necessary to implement her controversial initiative, rather than the federal employees who are needlessly subjected to it.

² Obviously, the less experience with or information about an agency has in relation to the work in question, the more cautious an agency should be in shifting that work from one workforce to another.

³ As the Department of the Army has concluded, it is necessary to determine whether commercial functions, "when contracted out beyond a certain level of reliance, increase overall risk to mission capabilities and readiness."

⁴ It is commonly acknowledged that the historic and systematic failure of contractors to provide airport security screener workers with adequate compensation jeopardized passenger safety and played a significant role in the decision of the Congress to contract in the screening function.

⁵ The consideration of alternatives to public-private competition is imperative when we remember that it can cost taxpayers as much as \$8,000 to review just a single job for privatization.

Not a single agency has conducted that basic research and analysis. Nor is there any indication that OMB or the agencies feverishly implementing the privatization quotas will rectify that dereliction, although the Army deserves some credit for thinking about these issues, albeit in the service of the indefensible "Third Wave" initiative.

2. The rewrite of the OMB Circular A-76 privatization process

In the past, when I mentioned "OMB Circular A-76," people's eyes glazed over. Not any more, though. OMB's controversial rewrite of the A-76 process has subjected this obscure directive to the much-needed glare of publicity. In fact, 170 House and Senate lawmakers have already signed on to a joint letter of objection to OMB about its November 14, 2002, A-76 rewrite proposal; and others have sent their own individual letters. And I'm not surprised. The November draft is so one-sidedly pro-contractor, it defies belief.

The Army's controversial "Third Wave" privatization initiative, which was designed to review for privatization without any public-private competition at least 210,000 federal and military positions, is widely viewed as being beyond the public policy pale. In fact, at least publicly, it has even been implicitly repudiated by the Army.

In summarizing the comments I submitted to OMB last December, I will argue that the A-76 rewrite has many similarities to the "Third Wave," is in some ways even more extreme, and could be used by the Army or other services to implement the "Third Wave."

In other words, the A-76 rewrite is in many ways a stealthy continuation of the discredited "Third Wave" by other means. It might actually be called the "Fourth Wave"—and, if implemented, it could constitute the final wave for federal employees, effectively wiping out what's left of the in-house workforce. Triumphant contractors are naturally exultant about the rewrite. In fact, as a result of the changes proposed by OMB, contractors insist that they will win 90% of all A-76 competitions, instead of the 40-50% they are winning now.⁶

A. Like the "Third Wave," the A-76 rewrite would emphasize privatization to the exclusion of all other methods of making the provision of federal services

⁶ For example, a James C. Fontana, Senior Vice President, Geotonics Government Solutions, told contractors gathered at a Contract Services Association of America event that merely switching A-76 to a "best value" process and "forc(ing) agencies to measure the true costs of their work" (i.e., double charging in-house bids for indirect personnel costs, while not charging contractor bids for the same costs) would "dramatically decrease number of Gov't 'wins' perhaps to 10%."

more effective, more efficient, and reliable.⁷ Also like the "Third Wave," the A-76 rewrite would require agencies to review 100% of their in-house inventories for privatization.

This represents a radical shift in philosophy. The current circular places the privatization process in its proper context, as just one tool in a manager's toolbox. The process of improving service delivery, according to the current Introduction, page 1, "must consider a wide range of options, including: the consolidation, restructuring or reengineering of activities, privatization options, make or buy decisions, the adoption of better business practices..." Even DoD employs a "strategic sourcing" approach that involves a range of options similar to those recommended in the Introduction to the current circular.

B. Unlike even the "Third Wave," the A-76 rewrite would include an explicit bias towards privatization.⁸

Per the A-76 rewrite, all work performed by federal employees would be considered appropriate for privatization.

C. Unlike even the "Third Wave," the A-76 rewrite would "rewrite" through a mere circular the law that defines "inherently governmental" in order to make it easier to contract out inherently governmental work.⁹

D. Unlike even the "Third Wave," the A-76 rewrite does not include an inventory to track the work performed by contractors, making it impossible for agencies to determine which inherently governmental work has been wrongly privatized, even though key figures in the Administration's privatization effort concede that this has already happened.

E. Unlike even the "Third Wave," which ostensibly calls for reviewing work performed by contractors, the A-76 rewrite would subject almost exclusively activities performed by federal employees to review.¹⁰

⁷ Actual Text (Daniels Memorandum, 4., page 1): "... (A)ll commercial activities performed by government personnel should be subject to the force of competition, as provided by this Circular."

⁸ Actual Text (Daniels Memorandum, 4.b., page 1): "Presume all activities are commercial in nature unless an activity is justified as inherently governmental." (Emphasis added.)

⁹ Actual Text (Attachment A, E.1., page A-3): "These activities require the exercise of substantial official discretion in the application of government authority and/or in making decisions for the government." (Emphasis added) The addition of the word "substantial" rewrites the language in the FAIR Act that defines "inherently governmental."

¹⁰ Actual Text (Daniels Memorandum, 4., page 1): "... (A)ll commercial activities performed by government personnel should be subject to the forces of competition." (Emphasis added.)

Despite the fact that contractors acquire and retain almost all of their work without public-private competition and precious little private-private competition, OMB has never applied such quotas to the federal government's massive contractor workforce. For those keeping score, at least 850,000 federal employee jobs would be subjected to privatization under the rewritten A-76. At the same time, only a tiny handful of contractor workers would be reviewed. And in DoD, not a single contractor job is scheduled to be reviewed for insourcing.

- F. Unlike even the "Third Wave," the A-76 rewrite would not establish a reliable and comprehensive inventory to track work performed by contractors, although the new process combined with the OMB privatization quotas will drastically increase the number of taxpayer dollars given to contractors.

I will now discuss how the A-76 overtly encourages agencies to directly convert work performed by federal employees to contractors without any public-private competition, a la the "Third Wave."

- G. The rewritten circular retains various direct conversion methods of giving work to contractors without public-private competition that are included in the current circular, including special authorities for smaller functions, whenever it can be claimed not to adversely impact federal employees, waivers, and business case analyses.¹¹ Because of the OMB privatization quotas, agencies would be encouraged to make use of all of these explicit direct conversion methods.

With respect to the authority for direct conversion of smaller functions, OMB has failed to require agencies to employ the Department of the Interior model that first performs a bare-bones cost comparison between the existing in-house workforce and private sector firms performing similar work before shifting any work to contractors.¹²

The direct conversion authority where there is ostensibly no impact on federal employees has been significantly expanded so that it applies without numerical limitation on the number of federal employees involved and could now also be used when "all directly affected Federal civilian employees within the agency...voluntarily retire." This is surely smart politics, encouraging agencies to

¹¹ For the Actual Text, please see Attachment C, A.1., 2., 8., and 9, pages C-1, C-2.

¹² According to an April 8, 2002, GovExec.com article, "The Interior plan gives agencies a new option for holding public-private competitions on functions involving 10 or fewer employees. Currently, agencies may directly convert such small functions to the private sector without giving civil servants a chance to compete for their jobs. Interior's plan, by contrast, would allow federal employees to keep their jobs if they could perform the work at a lower cost than private firms." While less than the ideal of allowing federal employees to put their best bid forward as a real Most Efficient Organization, it's surely better than the wholly noncompetitive process mandated by the rewritten circular.

give work to contractors when there might be no opposition from an in-house workforce, but is it good for government? Of course not. Divesting an agency of a function through privatization without making a formal make-or-buy decision simply because of its political expediency is clearly bad for government.¹³

I will now discuss how the A-76 covertly encourages agencies to directly convert work performed by federal employees to contractors without any public-private competition, a la the "Third Wave."

- H. If managers responsible for conducting competitions for work performed by federal employees are unable to complete those competitions within 12 months, the work can simply be given to contractors.

"If you can't complete the (competition within 12 months) then you are not prepared to do the work, so we will outsource it," thundered OMB's David Childs, according to the November 18, 2002, edition of *Federal Times*.

In response to intense criticism, Ms. Styles, in a January 28, 2003, article in *The Washington Post*, spun OMB's position, "saying it was 'absolutely not' true that agencies who exceed the 12-month time frame would automatically lose the competitions to a private-sector bidder. 'Could one of the alternatives be that this work goes to the private sector? Yes, it is,' she said. 'But that's not the favored alternative. It's not the presumed alternative.'"

The ability of rank-and-file federal employees to perform a service and the ability of management elsewhere in the agency to conduct a competition for that service are obviously apples and oranges. To say that federal employees should be converted without competition because the agency didn't finish its competition on time is like saying that all OMB staff should be fired because the Director didn't submit his testimony on entitlement spending to the House Budget Committee on time. No arbitrary deadline for the completion of a competition, particularly one that involves a direct conversion of jobs to contractors as a penalty, is ever appropriate, period.

¹³ This is the sort of loophole that caused the "human capital crisis," and the rewritten circular's expansion of that loophole would only exacerbate that crisis. For a precedent, we need look no further than the ruinous downsizing that has taken place in the Defense Department's acquisition workforce; as the Inspector General reported in 2000, DoD hired contractors to replace the civilian employees in the acquisition workforce who "voluntarily retired"—at higher costs. Among the adverse consequences reported by multiple acquisition organizations from the downsizing: insufficient staff to manage requirements efficiently, reduced scrutiny and timeliness in reviewing acquisition actions, increased backlog in closing out completed contracts, and lost opportunities to develop cost savings initiatives. The IG also reported that seven different acquisition organizations experienced "increased program costs resulting from contracting for technical support versus using in-house technical support." All such privatization occurred through direct conversions, the rationale being that the federal workforce had (been) retired. The results: inherently governmental work was privatized and taxpayers paid more than before.

- I. Agencies should be able to convert work performed by federal employees to contractor performance without competition when management does not punctually submit in-house tenders;¹⁴ however, instead of canceling solicitations when contractors submit bad proposals or don't submit their proposals on time, agencies are expected to rewrite their solicitations to address the complaints of contractors.¹⁵

If the Agency Tender Official, a management official, fails to submit the in-house tender by the deadline, the jobs of innocent rank-and-file federal employees, who are in no way responsible for the mechanics of the privatization process, could be given to contractors without any public-private competition. This is obviously unfair to the affected workforce and to the taxpayers.

Because the OMB privatization quotas give agencies full credit for completing direct conversions pursuant to OMB Circular A-76, the same as if the jobs had been subjected to real public-private competitions, agencies will have little incentive to submit thoughtful in-house tenders in timely fashion. Why bother taking the time to craft the best possible in-house tender when the agency can do no work at all and get the same amount of credit, because OMB doesn't care whether the work is competed or converted, as long as any work performed by federal employees is ultimately privatized?

In the event management fails to punctually submit an in-house tender, the contracting officer can only allow additional time for the resubmission of all offers; she cannot change the solicitation in order to encourage the submission of an in-house tender. That takes on significance when we review what must be done when contractors don't submit proposals or don't submit good proposals.

Contractors would be painstakingly surveyed about what they might not like about the solicitation and what it might take to get them to submit better proposals, perhaps even submit them on time. Contracting officers will be

¹⁴ Actual Text [Attachment B, C.3.(9), page B-9]: "When the in-house bid is not submitted, the agency's privatization czar "may: (1) instruct the Contracting Officer to return received offers and tenders and amend the solicitation allowing additional time for resubmission of all offers and tenders, or (2) instruct the Contracting Officer to proceed with source selection without the Agency Tender."

¹⁵ Actual Text: [Attachment B, C.3.(9)d, on page B-10]: "When a Standard Competition is attempted but private sector offers or public reimbursable tenders are either not received, or those received are found to be non-responsive or not responsible...the contracting officer shall document, in writing, the following: (1) restrictive, vague, confusing, or misleading portions of the solicitation; (b) possible revisions to the solicitation to encourage participation; (2) the reasons provided by sources for not submitting responses; and (3) the reasons offers or tenders were either not responsive or not responsible. The contracting officer and the source selection authority shall evaluate the results of these discussions and propose a course of action in a written document to the (agency's privatization czar). The contracting officer shall provide a copy of this written document to the Performance Work Statement Team, Agency Tender Official, and to the public, upon request...(The agency's privatization czar) shall evaluate the contracting officer's written recommendation and make a written determination to either (a) revise solicitation or (2) implement the (in-house bid)."

encouraged to water down solicitations to accommodate various contractor failings. (Please remember that in the analogous situation for federal employees the contracting officer can only extend the deadline for resubmission of proposals, not rewrite the solicitation to certain accomodating specifications.) In fact, this indulgence towards contractors—the equivalent of a child not doing his homework and the teacher then allowing the child to say how much easier he'd like that homework assignment to be—is a form of contracting out the process of writing the solicitation. There are few things more inherently governmental than an agency determining what services it needs and how it wants those services provided. OMB's rewrite of the circular will subtly but certainly allow contractors to tell agencies how to write their solicitations and then submit matching proposals. OMB is actually institutionalizing a wholly anti-taxpayer conflict of interest.

Finally, it should be noted that the recommendation to the agency's privatization czar must be made public, unlike the paperwork associated with a decision to convert to contractor performance work performed by federal employees when management is late with its own tender submission. Whether it's a big deal or a little deal, OMB has clearly favored the contractors at every possible opportunity.

I will now discuss how the A-76 rewrite requires federal employees—but not contractors—to undergo public-private competition in order to perform or retain new work, segregable work, and existing work.

- J. Federal employees—but not contractors—must compete to perform new work.¹⁶
- K. Federal employees—but not contractors—must compete when they are doing exactly the same work as before, but the value of that work increases by as little as 30%.¹⁷
- L. Federal employees—but not contractors—must compete to continue to perform work when their contracts expire; or agencies may simply give such work away to contractors through direct conversions.¹⁸

¹⁶ Actual Text [Attachment A, A.2.b.(3), page B-2]: "Agencies shall use Standard Competitions to justify... (a) agency... performance of a new requirement. A Standard Competition is not required for private sector performance of a new requirement competed (sic) in accordance with the Federal Acquisition Regulation."

¹⁷ Actual Text: [Attachment A, A.2.b.(4), page B-2]: "Agencies shall use Standard Competitions to justify... (a) agency... performance of an expansion of existing commercial activities. An expansion is the modernization, replacement, upgrade, or increased workload of an existing agency performed commercial activity that increases the operating cost of the activity by 30 percent or more... A Standard Competition is not required for private sector expansion competed (sic) in accordance with the FAR."

At the outset of this discussion, one point needs to be fully understood. The rewrite of the circular applies only to the circular, not the Federal Acquisition Regulation (FAR). However, the rewrite of the circular inserts the FAR into the circular. Consequently, to the extent the FAR itself has problems with respect to many issues involving competition between and among private contractors to perform the federal government's work—and it does—public-private competition will now be burdened with those problems.

As Ms. Styles remarked at a House Armed Services Readiness Subcommittee hearing last year,

"There needs to be some recognition that there are problems in the private-private system for competition and FAR based competitions. It's not a perfect system and we may be exacerbating some of the problems when we try to apply the FAR based system private-private competitions to public-private competition."

Although "full and open competition" is technically still the law of the land, recent "acquisition reform" (sic) law (e.g., the Federal Acquisition Streamlining Act and the Clinger-Cohen Act) has virtually made "full and open competition" the exception rather than the rule in awarding contracts, particularly with respect to service contracts.

There are so many exceptions to the rule that are technically deemed to involve competitive procedures [e.g., use of Government-Wide Acquisition Contracts (GWACs), multiple and single agency indefinite delivery / indefinite quantity (ID/IQ) contracts, General Service Administration (GSA) schedules, the higher dollar threshold and other requirements for "commercial requirements," etc.] that the "full and open competition" standard is essentially dead. (And, of course, it's getting worse. The streamlined acquisition authority under Section 833 of the new Homeland Security Act allows any service to be deemed a commercial item for purposes of federal procurement laws.) Moreover, many of these "competitive alternatives" are protest proof, meaning that they are not even subject to administrative or judicial review.

Agency Inspectors General, the GAO, respected procurement judges, and even OMB officials have bemoaned the largely non-competitive state of government contract awards.¹⁹ Here are some examples:

¹⁸ Actual Text [Attachment B, C.S.b.(2), page B-16]: *"By the end of the last performance period stated on the Standard Competition Form, another public-private competition or Direct Conversion shall be completed in accordance with this Circular."*

¹⁹ Contractors still try to insist that there is competition between contractors, albeit unpersuasively. At a March 6, 2002, hearing of the Senate Governmental Affairs Committee, a contractor representative insisted that "Contractors, for instance, are subject to a range of checks and balances, including continual

According to a 2000 report of the DoD Inspector General, "(I)nadequate competition occurred for 63 of the 105 contract actions" surveyed.

Later that year, the GAO reported that most information technology orders were sole-sourced. In fact, "only one proposal was received in 16 of the 22 cases" (or about \$444 million of the total \$553 million).

The Associated Press reported last year that the federal government,

"bought more than half its products and services (in 2001) without bidding or through practices that auditors say do not fully take advantage of the marketplace...Concerns about the government's new (i.e., post-acquisition reform) style of shopping are simply put: Buying without competition often means the public treasury gets overcharged."

Judge Stephen M. Daniels, Chairman of the General Services Board of Contract Appeals, has declared that,

"Although some parts of the (1984 Competition in Contracting Act) remain on the statute books, the guts have been ripped out of it. Openness, fairness, economy, and accountability have been replaced as guiding principles by speed and ease of contracting. Where the interests of the taxpayers were once supreme, now the convenience of agency program managers is most important. Full and open competition has become a slogan, not a standard; agencies have to implement it only 'in a manner that is consistent with the need to efficiently fulfill the Government's requirements.' It is now much easier to acquire goods and services without competition. Notice requirements have been reduced, particularly as the Government increasingly fulfills its needs without conducting formal procurements. The drive to have the Government present a single face to industry has been sent into retreat: agencies have been given greater discretion to procure in their own idiosyncratic ways. Government-wide regulations have been discarded or

competitive pressures. In fact, some 75 percent of all services contracting actions, and more than 90 percent of all information technology services contracting actions, are competitively awarded..." As AFGE pointed out subsequently, this is a very misleading use of statistics from the Federal Procurement Data System. Although the contract vehicle (a.k.a., "hunting license") in a multiple award scenario may be considered to be competitively awarded, funding is provided through task orders. Such task orders through September 30, 2001, were automatically classified as competitively awarded, regardless of the circumstances. Although it is not possible to recreate the records to determine whether task orders to multiple award service contracts were competitively awarded, a DoD IG review indicated that an astounding 72% of 423 multiple-award task orders awarded in fiscal years 2000 and 2001 were awarded on a sole-source or directed-source basis.

diminished in importance, and programs and whole agencies (the Federal Aviation Administration being just the first) are being allowed to procure under unique and sometimes vague rules and procedures."

Ms. Styles herself has also said that,

"Since the beginning of the (acquisition) reform movement, over a decade ago, I have not seen a serious examination of the effects of reform on competition, fairness, integrity, or transparency. As a result, I think we are seeing some serious competitive problems surface with the proliferation of government-wide contracting vehicles and service contracting."

Clearly, contractors are not always required under the FAR to compete against one another to win or retain service contracts. Consequently, while the rewritten circular will require federal employees to compete to perform new work and segregable work as well as retain existing work, contractors will be able to acquire and keep such work without ever having to compete against federal employees or even one another.

Let's look in particular at segregable work. Under the rewritten circular, an automatic competition requirement kicks in for federal employees when the value of work that they are already performing merely increases in value by 30 percent. What happens to contractors in such circumstances? The FAR does not use the concept of percentage increases in scope of work in order to determine whether a new competition is required. Rather, the FAR and government contract case law use the concept of "scope."

For example, if operating a telephone servicing center is expected to cost \$10,000,000 but ultimately costs \$15,000,000, this does not necessarily mean that new work has been added. It could just be that the original cost estimates were low, that the winning offeror low-balled his bid, or that more effort was required than originally anticipated. The general test of whether new work has been added is whether the added work is within the original "scope" of anticipated effort that the contractor was supposed to provide. Mere dollar value increases in the work under contract does not constitute expanded scope requiring a new competition. In practice, however, even if new scope is added to a contract, this is almost always performed by the original contractor. That's just a way of life in government procurement. If the contract is a high visibility contract, typically a sole source justification will be written, with the justification stating that "given the experience of the contractor in the work already performed, it is the only source that can continue to 'practicably' complete the work in process."

I will now discuss how the A-76 rewrite would hold federal employees far more accountable for failure than contractors.

M. When federal employees are found in default, the work must automatically be converted or competed; for contractors, however, it could be business as usual.²⁰

What happens to federal employees under the rewrite is clear. However, the consequences for defaulting contractors aren't quite so dire. Per FAR Part 49, "The following courses of action, among others, are available to the contracting officer in lieu of termination (of a contract) for default when in the Government's interest: (a) Permit the contractor, the surety, or the guarantor, to continue performance of the contract under a revised delivery schedule. (b) Permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the Government are adequately preserved..."

Moreover, contractors can and do vigorously litigate to avoid being found in default.²¹ Federal employees and their union representatives, on the other hand, have no such recourse.

I will now discuss six different ways the A-76 rewrite favors contractors over federal employees.

N. Agencies should provide much more justification under the A-76 rewrite before canceling an award to a contractor than when the work has been won by federal employees.²²

²⁰ Actual Text [Attachment B, C.5.c.(2), page B-16]: "If an agency, private sector or public reimbursable provider fails to perform to the extent a termination for default is justified, agencies shall comply with the following: (a) for a private sector provider, the Contracting Officer complies with the FAR Part 49; (b) for an agency or public reimbursable provider, the head of the requiring organization shall issue a notice to terminate and shall recommend, in writing, that the (agency's privatization czar) approve either (1) a Direct Conversion based upon a Standard Competition Waiver or (2) a Standard Competition."

²¹ "How To Avoid & Overturn Terminations for Default," a veritable Bible for contractors who have strayed from the path of compliance, lists a variety of aggressive defenses that have been used successfully by contractors to avoid default determinations, including excusable delay, defective specification and impossibility, waiver of contract due date, contracting officer's failure to follow procedural requirements, contracting officer's failure to exercise discretion, and contracting officer's abuse of discretion; and there are many more defenses for specific types of contracts.

²² When federal employees win the work but the agency wants to cancel the solicitation, the contracting officer is merely required to cancel in accordance with the FAR. However, when a contractor wins, the agency's privatization czar must personally certify the cancellation. But wait—there's more. The agency's most senior official must then submit a detailed report to the OMB Deputy Director for Management, the agency's third most senior official, that states the contracting officer's cancellation decision was in accordance with the FAR. But wait—there's still more. The agency's most senior official must also justify to one of the most important officials in the federal government's most powerful agency that the

- O. Under the A-76 rewrite, contractors—but not rank-and-file federal employees directly affected by privatization or their union representatives—can participate in all appellate processes, to the Administrative Appeal Authority, the GAO, or the Court of Federal Claims.²³
- P. Under the A-76 rewrite, only the confidential nature of proprietary information of the contractors' bids is protected.²⁴
- Q. The only conflicts of interest addressed by the A-76 rewrite are those that might conceivably benefit federal employees in the privatization process; the

cancellation "was clearly in the public interest," "provide the agency's rationale for canceling the solicitation," and then state the "approximate date for reissuance of the solicitation..." For the actual text, please see Attachment B, C.2.a.(14), page B-7.

²³ Actual Text [Attachment B, C.6.a.(1), page B-17]: *"The Administrative Appeal Process provides directly interested parties an opportunity to have an independent agency official review the Performance Decision."*

"Directly interested parties" is not defined in the Definition of Terms. With respect to the in-house workforce, only the Agency Tender Official is identified in the rewritten circular as a "directly interested party." Actual Text [Attachment B, B.1., page B-3]: *"The ATO shall be considered a directly interested party."*

Directly affected federal employees and their union representatives would not be allowed to participate in this process. Moreover, as the Agency Tender Official is a management official, it is manifestly unreasonable to expect that he could act independently on behalf of directly affected federal employees in appealing to another management official who would serve as the Administrative Appeal Authority. Finally, it should be noted that the internal appellate process applies only after the Performance Decision. There is no provision for appeal of such important pre-performance questions as the decision whether to use sealed bidding or negotiation, the choice of evaluation factors and their weights, or an allegedly defective performance work statement. How can an internal appellate process be fair if it is forbidden to challenge the very "ground rules" of the competition?

While directly affected federal employees will be allowed only representation by a management official who will determine entirely on his own whether to appeal to another management official who is forbidden to review most questions raised by the privatization process, contractors, on the other hand, will still be allowed to appeal all pre-Performance Decision and post-Performance Decision questions to the GAO and the Court of Federal Claims. Moreover, per Attachment B, C.6.a.(1), page B-17, contractors will still be able to participate in the internal appellate process with respect to "questions regarding a private sector offeror's compliance with the scope and technical performance requirements of the solicitation."

The rewritten circular is needlessly punitive with respect to the involvement of federal employees in the appellate process. The current circular allows employees 20 calendar days during which to file an appeal. Per Attachment B C.6.a.(2), page B-17, the submission period is reduced to 10 working days. Given that federal employees, whether or not represented by unions, are less likely to have legal representation, this change will have a disproportionately adverse effect on the in-house workforce.

²⁴ Actual Text [Attachment B, C.6.a.(2), page B-17]: *"Where private sector proprietary information is involved a redacted copy of the appeal and decision documentation will be made available."*

longstanding conflicts of interest which demonstrably benefit contractors will continue to undermine the integrity of the privatization process.²⁵

- R. Under existing law and regulation, federal employees—but not contractors—would continue to be subject to a myriad of requirements and obligations under the A-76 rewrite.²⁶
- S. Under the A-76 rewrite, tenders submitted by federal employees must include “all” costs, even when they are irrelevant or have already been counted, while contractors should be allowed to exclude significant costs from their own proposals.

The calculation of costs has been an extraordinary obsession for contractors through the years. They know that if they could ever artificially inflate the cost of in-house tenders, they would win the vast majority of competitions. And, in OMB,

²⁵ Excerpted Actual Text [Attachment B, D.2.a.(1), D.2.b.(1), D.2.c.1., pages B-19-20]: “*To avoid any appearance of a conflict of interest, members of the Performance Work Statement Team shall not be members of the (In-House Bid) Team. Members of the (In-House Bid) Team shall not be members of the Source Selection Executive Board.*”

As OMB officials know very well, the reason managers experienced with privatization often had to play multiple roles in the process is precisely because agencies employ so few of them. Because the rewritten circular means more competitions and conversions but no more staff or training, agencies will be forced to rely even more on contractors to conduct the competitions, particularly with respect to writing performance work statements and in-house bids.

Again, because the radical overhaul of the privatization process is being accomplished only through a rewrite of the circular, contractors emerge completely unscathed. As anybody with even a modicum of experience with procurement understands, the privatization process is rife with conflicts of interest that benefit contractors. FAR Subpart 9.5, for example, purports to be designed to minimize contractor conflicts of interest. However, it is largely full of empty exhortations. Conflicts of interest arise when contractors recommend or otherwise advise buying agencies to make additional purchases from the contractors with whom the recommending contractors have business interests. While the FAR tries to address blatant conflicts (e.g., contractors recommending themselves for jobs), the nature of modern day government contracting is replete with contractor “partnerships,” “strategic relationships,” and other arrangements in which various contractors agree to help one another out—usually through various subcontracting relationships. The rewrite of the circular raises the very real prospect that contractors will be increasingly responsible for evaluating the work of other contractors—contractors with whom they have business interests at many levels. The inevitable conflicts of interest and the resulting corruption have the potential to make recent accounting and auditing scandals pale in comparison.

²⁶ As the independent scholar Dan Guttman has written, federal employees, but not contractors, are subject to a variety of rules “that address conflict of interest (e.g., 18 U.S.C. 208), assure that government activities are (with limits) ‘open’ to the public (e.g., Freedom of Information Act), limit the pay for official service, and limit the participation of officials in political activities.”

Despite this extraordinary effort to massively increase the number of politically well-connected contractors on the federal payroll and so completely blur the appropriate and vital distinction between public and private, OMB will make no effort to ensure that contractors are as accountable to the American people as federal employees already are.

contractors have an ally which is eager to help contractors finally fulfill this long-sought dream.

OMB has made much ado about ensuring that in-house tenders account for all of their "indirect costs." The existing circular already requires in-house tenders to include such overhead costs. The rewritten circular would require that in-house tenders be charged twice for the same overhead costs.²⁷

The 12 percent "standardized cost factor" for indirect costs in the existing circular would be retained in the rewritten A-76.²⁸ However, the rewritten circular would allow agencies to charge in-house tenders for indirect costs a second time, under "personnel costs."²⁹

Not only would the rewritten circular charge the in-house tender twice for the same costs, but the definition of in-house indirect labor costs is so broad as to ensure that any time an agency wanted to ensure the privatization of a function

²⁷ Actual Text [Definition of Terms, page F-7]: "Overhead is a cost that is included in all cost proposals. The overhead used in cost estimates submitted by agency or reimbursable sources is the OMB required standard cost factor identified in Attachment E. This standardized cost factor accounts for indirect costs that are comparable to those included in private sector offers, represent costs to the taxpayer that are not necessarily visible at the installation, headquarters level or Department level, but are provided by the Government's budget at an expense to the taxpayer..."

²⁸ Actual Text [Attachment E, B.4.b., page E-11]: "The 12 percent overhead factor is a rate established by OMB to represent an overhead cost factor for all Federal agencies when performing Standard Competitions... This overhead factor represents costs that are not visible, allocable, or quantifiable to the agency, activity, or the Most Efficient Organization (MEO, or in-house bid). Use of the rate accounts for all management and support costs internal and external to the agency not required on Line 1."

A 1998 GAO report (NSIAD-98-62) provides information on the origins of the 12 percent overhead that is charged to all in-house tenders: "Absent (actual cost data about in-house overhead), OMB selected a single overhead rate of 12 percent, a rate that was near the midpoint of overhead rates suggested by government agencies and private sector groups. Most government and private sector groups (GAO) contacted agreed that reasonable levels of overhead should be included in A-76 cost estimates and, absent anything better, the 12 percent rate is acceptable at this time." The report noted that 12 percent rate for "(o)verhead was supposed to include two types of costs on a marginal or proportional basis: (1) operations overhead, which includes the costs of managing an organization that are not 100 percent attributable to the activity under study, and (2) general and administrative costs, which include the salaries and equipment, and work space related to headquarters management, accounting and finance support, personnel support, legal support, data processing support, and other common support activities such as facilities maintenance."

²⁹ Actual Text [Attachment E, B.1.b.(2), page E-4]: "Personnel costs for labor that is not dedicated to the MEO but clearly have responsibilities to the MEO are considered 'indirect labor.' Indirect labor includes, but is not limited to, personnel costs for MEO management and oversight activities, such as managers and supervisors above the first line of MEO supervision who are essential to the performance of the MEO. Indirect labor also includes the labor of individuals who are responsible for oversight and compliance actions implicitly required by the MEO in order to comply with the solicitation (e.g., supervision, human resources, comptroller, general counsel, environmental, OSHA Act compliance management)."

under competition management could easily manufacture the additional superfluous overhead costs.³⁰

But it gets worse. Not only would the rewritten circular charge the in-house tender twice for indirect labor costs, some of them wholly irrelevant to the MEO, contractors would not even be charged for their indirect labor costs.³¹

While the rewritten circular would charge in-house tenders with costs not once but twice and even when such costs are irrelevant, OMB is increasingly unwilling to charge contractors for their most basic costs. This raises serious equity and efficiency issues in the context of the circular and privatization generally.³²

³⁰ Actual Text [Attachment E, B.1.b.(2), page E-4]: *"The agency shall include in the Agency Cost Estimate the cost of indirect labor to reflect personnel who are responsible to manage, control, regulate, preside over, oversee, or supervise MEO related activities but are not dedicated to the MEO as a direct labor cost."* With such a broad definition, the in-house tender could be charged for the cost of maintaining Air Force One because, of course, the President is ultimately charged with the responsibility for "managing, controlling, presiding over, overseeing, and supervising" the MEO. And, to belabor the obvious, the functions in the agency that are being charged twice against the MEO would in almost all cases need to exist, and thus require the same resources, regardless of the MEO. Moreover, it must be noted that the rewritten circular actually exacerbates the perverse incentive to privatize work in order to reduce the pay and benefits of those who perform work for the federal government by imposing redundant and irrelevant indirect personnel costs on in-house tenders.

³¹ While contractors are charged with the cost of contract administration, they are not charged with the indirect labor costs of contract administration. For example, the costs associated with the personnel responsible for paying the contract administrators, or the cost of the human resources staff who hire the payroll staff, or the security guards who keep safe the building in which the contract administrators work, or the cost of the maintenance staff who keep clean the facility in which contract administrators work, or the managers of the contract administrators, or, in the words of the rewritten circular with respect to in-house bids, all of the other "personnel who are responsible to manage, control, regulate, preside over, oversee, or supervise (contract administration-) related activities but are not dedicated to the (contract administration workforce) as a direct labor cost."

³² One major factor in properly administering service contracts is cost control. Without adequate cost control mechanisms in place, ultimate contract costs, and consequently prices paid by the taxpayers, can rapidly spiral upward. And, although, much has been said about performance-based service contracting, the facts reveal that contractors continue to press government agencies to award contract types that minimize contractor risk and cost control.

With the exception of common commercially available off the shelf services, cost evaluations and / or determinations play a significant role in government contract pricing and / or reimbursement decisions. The simplest scenario is for cost-reimbursement contracts. For that contract type, actual reimbursement of the contractor is made on the basis of costs that have been determined to be allowable, allocable, and reasonable in accordance with specific accounting conventions, policy, and procurement regulations.

However, even for so-called fixed-price contracts, many times initial cost evaluations and / or determinations are required when estimating what a fair and reasonable price should be. In other cases, cost evaluations and / or determinations are required to estimate the pricing of "changed" or added work that occurs during contract performance. In still other cases, cost evaluations and / or determinations are required under fixed-price contracts in order to effect profit and/or fee adjustments, make progress (i.e., financing) payments, etc.

The A-76 rewrite changes how costs are calculated to benefit contractors in other ways as well:

Exclusion of the cost of a performance bond, which is executed in connection with a contract in order to ensure performance so as to protect taxpayers and agencies' customers from the consequences of default, would give contractors an unfair advantage.³³

Traditionally, when cost evaluations were made, contractors were required to submit cost or pricing data (i.e., certified pricing data). Under the various acquisition reform (sic) laws, the need for formal cost evaluations has not been reduced, but the form in which submissions are made has been. Frequently, contractors are now permitted to submit "information other than cost or pricing data" which is the same thing as cost or pricing data; it's just that the cost data is no longer certified, which legally relieves contractors from all manner of oversight. A contractor's certification must be that the cost data submitted are current, accurate, and complete. If it is later determined to be untrue, the government can make a claim against the contractor for defective pricing under the Truth in Negotiations Act (TINA).

The latest incarnation of the phenomenon of contractors running away from their costs is the rapidly increasing use of time and material (T&M) and labor hour (LH) contracts. These contracts place nearly all risk of cost control on the taxpayers, and substantially reduce cost visibility. T&M/LH contracts are frequently touted by contractors as an alternative to cost-reimbursement contracts. Unfortunately, T&M/LH contracts are prone to even less cost control than cost-type vehicles.

T&M/LH contracts are contracts in which hourly rates are paid by the government as services are rendered (e.g., \$75 hour for IT services). Added to these rates are any additional costs of material. Contractors claim that T&M/LH contracts are frequently used in the "commercial sector," thus, they should be used by the agencies. However, the increasing use of T&M/LH contracts has nothing to do with "commercial practice," rather it has to do with shifting performance risk to the government, and increasing profits for contractors. Under a T&M/LH contract, a contractor only promises to use its "best efforts" to accomplish the work. Performance is not guaranteed. For example, if a computer programming job is budgeted at 500 hours x \$75/hour, and the contractor does not complete the job within the hours specified, the government's only real recourse is to pay for more hours. Worse yet, because contractors are asking that T&M/LH contracts be recognized as "commercial"—a euphemism for no price protections, oversight or auditing—the government has tremendously reduced its ability to ensure that taxpayers are getting a good deal. As FAR 16.601 has long stated "A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency."

Recently, as a part of a rule ostensibly designed to increase competition and accountability in DoD service contracting, OMB initially tried to specifically require that use of T&M/LH contracts be accompanied by audit and pricing protection clauses in order to ensure that the government was getting a good deal. In doing so, OMB was only trying to enforce an existing FAR provision (FAR 12.207) that restricted use of T&M/LH contracts to circumstances in which audit and TINA clauses are included in the contract award vehicle. Ultimately, in the face of ferocious opposition, from information technology contractors and their Congressional supporters, particularly Representative Tom Davis (R-VA), Chair of the House Government Reform Subcommittee on Technology and Procurement Policy, OMB backed off its stance. It now appears reasonably likely that OMB will support allowing use of T&M/LH contracts without the safeguards provided by audit, TINA and Cost Accounting Standards contract clauses—while at the same time insisting the in-house tenders be charged twice for indirect labor costs, no matter how irrelevant.

³³ Actual Text [Attachment E, C.I.d., page E-12] "*When a solicitation requires the private sector offer to provide a performance bond, the cost of the performance bond is excluded from the private sector offer when entered on Line 7.*"

Security clearances are another example.³⁴ With respect to security clearances for the federal employee workforce, that is a sunk cost, one that has already been amortized, which is not the case with contractors.

Phase-out costs are yet another example.³⁵ The term "phase-out plans" does not appear in the rewritten circular's "Definition of Terms." However, phase-out costs are considered to include such significant one-time costs resulting from the transfer or disposal of employees, equipment, and facilities.³⁶

3. The threat to use "best value" in DoD's public-private competitions

Section 824 of the legislative recommendations submitted by DoD for the FY04 defense authorization bill calls for the end of an objective, cost-based competition process. It would be replaced by the controversial "best value" competition process, which allows contractors to submit more expensive and less responsive bids and still win contracts.

Contractors are not happy about losing almost three-fifths of the public-private competitions conducted under OMB Circular A-76. Rather than cut their costs and provide taxpayers with a better deal, contractors want to junk the existing

³⁴ Actual Text: [Attachment B, C.2.a.(12), page B-7]: *"The costs associated with security clearance requirements shall not be included on the Standard Competition Form for an agency tender, private sector offer, or public reimbursable tender."*

³⁵ [Actual Text, Attachment B, C.2.a.(6), page B-6]: *"For a Standard Competition, the Contracting Officer shall include in the solicitation a requirement for private sector offers, public reimbursable tenders and the agency tender to propose a phase-in plan to replace the existing incumbent service provider. Phase-in plans shall include details to minimize disruption, adverse personnel impacts, and startup requirements. The length and requirements of the phase-in must consider hiring, training, recruiting, security limitations, and any other special considerations to reflect a realistic phase-in plan. The costs associated with phase-out plans shall not be required by the solicitation or calculated on the Standard Competition Form."* (Emphasis added)

³⁶ For example, equipment that might have been used by the MEO could become surplus and then be made available for transfer to another in-house activity or to the contractor. In the event of transferring material to a contractor, it may be appropriate to do a special joint physical inventory, which would be a phase-out cost. Personnel, or labor-related costs, would include certain one-time labor-related expenses such as health benefit costs, severance pay, homeowner assistance, and relocation and training expenses.

A conversion to contract may also require an agency to take certain actions that would not be necessary if the activity had continued to be performed by federal employees. For example, it may not be possible to terminate a rent or lease agreement without a penalty fee, or it may be necessary to move materials that are not associated with the activity under study to another location in order to complete the transition. Moreover, there are costs of labor associated with the transfer or disposal of equipment, property or facilities. The rewritten circular should clearly define the many costs associated with phase-out and then count those costs against the proposals of the challenging offerors.

ultimately cost-based process and replace it with a pro-contractor "best value" process.

Instead of making the best decision for taxpayers, i.e., what costs less, acquisition officers would be encouraged to use all manner of subjective criteria to determine the winner of a public-private competition process, including such whimsical notions as a contractor's ability to respond "flexibly" to changing circumstances or the contractor's use of "innovative" approaches.

"Best value" would tilt the field of play even farther in contractors' direction by allowing acquisition officials to ignore the standards established in the solicitation in favor of the "bells and whistles" included in the contractor's offer.

"Best value" would also deny federal employees the opportunity to reformulate their offer in response to a contractor offer that exceeds the standards in the solicitation. If a contractor includes a feature in its bid that DoD thinks should be included in the solicitation, DoD should be allowed to go back and revise that solicitation—and allow both sides to reformulate their bid so that it includes that feature.

Contractors note that "best value" has been used in private-private competition. However, its use has been accompanied by extraordinary controversy and litigation because of its intrinsic subjectivity. Some of its most fervent critics are small business contractors. And it is precisely that subjectivity that makes a "best value" process so dangerous in the context of public-private competition. While it is not possible to systematically discriminate against one group of contractors in favor of another group of contractors, "best value" could be used systematically to discriminate against federal employees in favor of contractors, especially when wielded by an avowedly pro-contractor Administration that is rushing to review for privatization 850,000 federal employee jobs.

Contractors know that, historically, "best value" competitions between contractors have cost taxpayers more and taken longer to complete. However, they try to justify the use of "best value" by falsely asserting that A-76 currently doesn't allow for qualitative improvements in service. Wrong. As currently written, A-76 allows agencies, under a highly objective process, to establish the standards they want met by federal employees or a contractor, whether they are the same as before or more exacting, and then choose the provider with the lower cost. That's what's best for warfighters and taxpayers.

Unlike other agencies, DoD is protected from a "best value" process by 10 U.S.C. 2462 and 10 U.S.C. 129a. OMB is breaking with bipartisan tradition and encouraging non-DoD agencies to use a pro-contractor "best value" in public-private competitions. However, even OMB acknowledges that there are "special considerations" that must be taken into account with the use of "best value" in public-private competitions and that its use in non-DoD agencies should be

limited to a pilot project and that there should be testing before wider application is authorized. There is no reason for DoD to be the guinea pig. If "best value" boosters are so sure their much-criticized process is superior to objective, cost-based competitions, then let them prove it through the experience of non-DoD agencies participating in the OMB pilot project.

In the A-76 rewrite, OMB has created the worst possible "best value" pilot project process, one that would maximize the possibility of bias against federal employees:

The rewritten circular would include two types of privatization processes, sealed bidding and negotiated. The latter process includes three different processes:

1. sealed bidding process
2. negotiation processes
 - a. lowest price technically acceptable process
 - b. cost / technical tradeoff process
 - i. phased evaluation process
 - ii. integrated evaluation process

I did not list the various processes randomly. Rather, I have ranked them in order—from best to worst—with respect to their fidelity to four basic principles of fair competition for government services.

1. While taking into account issues of quality, is the process ultimately cost-based, and thus in the best interest of taxpayers?
2. Does the process minimize possibilities for bias and conflict of interest that could undermine the integrity of competitions?
3. Does the process prohibit the use of inappropriate evaluation factors and subfactors that encourage subjectivity, and thus allow for favoritism?
4. Does the process ensure that all offerors will be evaluated on a common basis?

Sealed bidding is the process that is most faithful to the principles of fair competition because of its emphasis on the objective criterion of cost. The absence of negotiation ensures that competitions under the sealed bidding processes focus on facts and figures in the proposals instead of politics and personalities in the process. Sealed bidding is also the best process because it doesn't use subjective evaluation factors and subfactors and does judge all bids against the same solicitation.

Although involving negotiation, which inevitably introduces the possibility for bias and conflicts of interest, the lowest priced technically acceptable process is the

second most faithful because it essentially awards the contract to the technically acceptable proposal that is least expensive to the taxpayers.

The phased evaluation process is similar in nature to the lowest priced technically acceptable process in that there is a prior determination whether the bids are technically acceptable. The crucial difference is that in the phased evaluation, offerors can add features that were not required in the solicitation. However, if the contracting officer decides that the agency needs and can afford the features, the solicitation must be amended, and all other offerors are allowed to compete on the same basis. This process does allow for the unlimited use of subjective evaluation factors and subfactors—the specific weights of which need not be disclosed—that can erode the integrity of the competitions.

The least faithful is the integrated evaluation process. A contractor can offer features that exceed the solicitation's requirements, and the contracting officer can then decide that these features are desirable without ever telling federal employees that their tender should also include those additional features. In other words, federal employees can submit a more responsive and less expensive bid and still lose if the contracting officer changes his mind about what he wanted. Offerors are not being judged on a common basis—a breach which undermines the very essence of fair competition. Like the phased evaluation process, this process does allow for the unlimited use of subjective evaluation factors and subfactors—the specific weights of which need not be disclosed—that can erode the integrity of the competitions. Also like the phased evaluation process, this process actually gives credit to contractors for submitting proposals in excess of the requirements in the solicitation, thus encouraging contracting officers to spend taxpayers dollars too freely, buying what they want, instead of what they need, in violation of the venerable minimum needs doctrine. Even under FAR private-private competitions, there is no requirement to report those, often excessive, price premiums on any of the standard contract reports under agency contract tracking systems.

Here are my specific criticisms of the regimen of privatization processes established under the rewritten circular.

- a. No guidelines regarding the use of subjective competition processes, even though OMB acknowledges the need for caution.

There are few requirements or limitations regarding the use of competition processes that are not ultimately based on cost. The announcement specifically recognized that there are "special considerations" that must be taken into account with a public-private competition and that, at least with integrated evaluation techniques, there should be limited use and testing before wider application is authorized. (67 Fed. Reg. at 69773) However, that appropriate caution is recognized nowhere in the rewritten circular because there are few hurdles that must be overcome before subjective evaluations based on factors other than price can be authorized.

- b. No traditional preference for sealed bidding, which would minimize management bias against in-house workforce.

Negotiation has become unduly popular in private-private competition in large part because contracting officers can much more easily control the outcomes of competitions through their selection of evaluation factors and subfactors and their assignment of weights to those evaluation factors and subfactors. In the context of public-private competition, which is simply politics by other means, such discretion could be systematically used against in-house bids.

Under FAR 6.401(a), sealed bidding should be used if time permits and it is not necessary to conduct discussions with responding offerors about their bids.

The only constraints on time in the context of the rewritten circular are those arbitrarily imposed by OMB, and thus are a wholly inadequate excuse to avoid sealed bidding.

Moreover, an agency's requirements in a public-private competition will be particularly well-known where the work is already being performed by the public sector (i.e., the preparation of the performance work statement will be based on known and previously performed requirements). Moreover, the members of the Source Selection Evaluation Board can be expected to have extensive experience with the activity to be described in the performance work statement.

Under FAR, no government contract can be awarded unless the contracting officer makes an affirmative determination of "responsibility." [FAR 9.103(b)] The detailed requirements for an affirmative determination of responsibility are set forth in FAR 9.104-1, including adequate resources, organization, facilities, quality, etc. An affirmative determination of responsibility basically requires a finding by the contracting officer that the offeror can perform the contract satisfactorily and in accordance with the required schedule.

An offeror has the burden of convincing the contracting officer that it is "responsible" (i.e., can perform satisfactorily and on time). [FAR 9.103(c).] Contracting officers have broad discretion in making responsibility determinations. The Comptroller General generally will not even question a negative determination of responsibility unless the protester can demonstrate a lack of any reasonable basis for the contracting officer's negative determination.

If the required activities are known, and if an affirmative finding of responsibility must be made reflecting that the public or private sector offeror can perform satisfactorily and in accordance with the required schedule, there should be few circumstances in which it will be necessary to conduct "discussions" with offerors about their bids.

However, the rewritten circular fails to express a strong preference for sealed bidding in all but the most extraordinarily exceptional circumstances.

- c. No preference for the use of a lowest price technically acceptable process in the event it can be shown why sealed bidding absolutely cannot be used.

If it can be conclusively demonstrated that the preferred sealed bidding method is impractical, the secondary preference should be for the lowest price technically acceptable process. The determination of "technically acceptable" is basically a finding that the proposal fully meets the requirements of the performance work statement and that the offeror can perform the contract satisfactorily and in accordance with the required schedule (much like a "responsibility" determination).

In the competitive procurement system, it is the responsibility of the offeror to submit a proposal that fully demonstrates the technical acceptability of the proposal. The offeror has the burden to convince the source selection official "within the four corners of its proposal" that it is capable of performing the contract. If the proposal fails to demonstrate that the offeror can comply, there is a reasonable basis to find the proposal technically unacceptable.

If a proposal or tender does not demonstrate that the offeror can perform the performance work statement "satisfactorily" and in accordance with the required schedule, the proposal or tender is, by definition, not "technically acceptable." Therefore, there is minimum risk to agencies in using the lowest price technically acceptable process. Under these circumstances, the "lowest price" of a technically acceptable proposal assures an objective determination of the "best value" to the agencies.

- d. No limitation on the use of evaluation factors and subfactors, both objective and subjective, in the "best value" process.

The rewritten circular allows an unlimited number of evaluation factors and subfactors to be used in the crafting of the performance work statement, giving contracting officers unlimited opportunities to bias the "best value" process against in-house proposals. For example, in one notorious case, the contracting officer employed 10 factors with each having up to 19 subfactors.

The rewritten circular's "best value" process places no limitations on the use of subjective evaluation factors and subfactors, including those which are, by their nature, not appropriate to apply to public sector competitors operating under civil service and other government directed policies, but which are commonly used in private-private "best value" competitions (e.g., uncompensated overtime, political views, government contracts, vendor relationships, public relations, and business systems and practices).

The rewritten circular's "best value" process would also allow the use of subjective evaluation factors and subfactors that could easily be used by contracting officers to skew competitions. Examples of such highly subjective factors and subfactors that are commonly used in private-private "best value"

competitions include vision, reputation, aesthetics, efficiency, intrinsic value, and the availability of pop-up towel dispensers.

- e. No requirement that the weights given to evaluation factors and subfactors, both objective and subjective, be revealed before proposals are submitted.

Although the FAR requires that the "relative importance" of evaluation factors and subfactors be revealed in the solicitation, there is no requirement that the specific weight of all evaluation factors and subfactors be revealed before offerors submit their proposals. That means contracting officers can wait until offerors have submitted their proposals until deciding how much weight to give the objective and subjective evaluation factors and subfactors. The possibilities for gaming the system are as numerous as there are evaluation factors and subfactors.

- f. No requirement that federal employees be given a chance to reformulate their proposal if the contracting officer changes the solicitation in the "best value" process.

The integrated evaluation "best value" competition process is particularly discriminatory against in-house proposals. Federal employees can submit a less expensive, more responsive proposal—and still lose if the more expensive, less responsive contractor proposal includes a feature that management did not include in the performance work statement but subsequently determines is desirable. This arrangement maximizes the possibility for anti-federal employee bias. If an offer that exceeds requirements contains a feature that is sufficiently important, the solicitation should be amended to permit competition from all offerors for the additional feature (as is done in rewritten circular's phased evaluation "best value" competition process). "Innovation" should be encouraged to perform the government's requirements. However, if different performance standards are to be permitted, the solicitation should specifically describe the alternatives to be permitted, or the solicitation should be amended to incorporate the higher performance standard desired by the agency.

- g. Despite OMB protestations about reviewing for privatization as many as 1,000,000 federal employee jobs in order to save dollars for taxpayers, the rewritten circular's "best value" process would not require cost to be emphasized in the weighting of evaluation factors and subfactors.

If OMB is really interested in using privatization to save money, why does the rewritten circular not assign a minimum weight to cost of at least 75%, especially considering that contracting officers can still obtain assurance that the offerors are technically qualified and otherwise able to perform satisfactorily through diligent responsibility determinations?

If OMB is really interested in using privatization to save money, why does the rewritten circular not specify that solicitations include a maximum amount or

percentage by which the award price can exceed the cost of the lowest offer from a responsible offeror (i.e., the "price premium" paid for factors other than cost)?

If OMB is really interested in using privatization to save money, why does the rewritten circular's "best value" process allow offerors evaluation credit for exceeding the requirements of the performance work statement? If there is a "need" for higher performance, service, or quality, it should be set forth in the original solicitation so that all offerors have a fair opportunity to compete. Giving extra evaluation credit for exceeding the agency's requirements violates the historical "minimum needs" doctrine (i.e., that the federal government has implied authority from an appropriation of funds to purchase only what it needs, not what it wants). The practice of giving credit for exceeding requirements also is subject to corruption by "leaking" desired features that are not contained in the performance work statement.

h. The rewritten circular's use of "past performance" is intrinsically biased against in-house proposals.

Actual Text [Attachment B, C.2.a.(13), page B-7]: *"Solicitation requirements for the following shall not apply to an Agency Tender:...(6) past performance criteria."*

FAR 15.304 requires evaluation of "past performance" in all competitions, although it provides an out if a contracting officer "documents the reason 'past performance' is not an appropriate evaluation factor for the acquisition." The FAR also provides that if an offeror has no record of "past performance," the offeror "may not be evaluated favorably or unfavorably" on this factor. Historically, GAO has allowed agencies broad discretion in determining how to proceed. GAO has held that a Source Selection Authority, in making a trade-off decision, can weigh the value of a good (or poor) "past performance" rating against a neutral rating and conclude that the proposal with a good "past performance" rating offers better value than the offeror with a neutral rating. If this rule applies here, in competitions where cost and other technical factors are close a contractor's good "past performance" rating can make the difference and result in a decision in favor of the contractor on the basis of a factor not applicable to the agency. In other words, the approach to "past performance" could skew the evaluation results against the in-house bidder.

Actual Text [Attachment B, C.2.a.(13), page B-7]: *"For agency tenders where a government MEO has been implemented in accordance with...a previous competition, the Contracting Officer shall include Agency Tender past performance criteria in the solicitation and evaluation criteria..."*

The actual text includes references that are either mistaken or do not exist. Moreover, it is not clear if the MEO is to be evaluated on the same "past performance" criteria as contractor offerors. If so, that would be clearly

inconsistent with the basic requirement of competition that all offerors be evaluated on a common basis.

- i. Arbitrary imposition of a performance based standard on all privatization efforts.

Actual Text [Attachment B, C.2.a.(1), page B-5]: *"A performance work statement that is developed in a Standard Competition shall be performance based with measurable performance thresholds and may encourage innovation."*

Under performance based contracting, the contracting officer essentially specifies the outcome or result it desires and leaves it to the contractor to decide how to best achieve the desired outcome. Obviously, this is a standard that should be used with considerable caution.

The rewritten circular's blind mandate for the use of performance based service contracting is clearly premature. A recent GAO review "raise(d) concern as to whether agencies have a good understanding of performance based contracting...Agency officials themselves pointed to the need for better guidance on performance based contracting and better criteria on which contracts should be called 'performance based.'"

Moreover, many activities targeted for privatization are clearly unsuitable for performance based contracting because they present the sort of safety, cost, and technical risks that require that contracting officers be prescriptive and exert rigorous oversight.

Performance based contracting is clearly inappropriate for all but genuinely fixed-price contracts. If a contractor is going to determine precisely how a service should be provided, it is clear that he should be held to a fixed price. Cost reimbursement contracts or fixed price contracts that include cost evaluations are clearly incompatible with performance based service contracting. Otherwise, a contractor would have an obvious incentive to prescribe the most expensive and lucrative methods to fulfill the contract.

After ensuring that the decision whether to use performance based contracting is: a) handled on a case-by-case basis, b) is deemed appropriate only for the most common services, and c) is restricted to only genuinely fixed-price contracts; it is imperative that any performance based service contracting include detailed requirements in terms of results, strong performance standards, and comprehensive quality assurance plans.

4. The Army's "Third Wave" privatization initiative

In his October 4, 2003, memorandum, Secretary White set in motion a process he called "Third Wave," by which the agency would review for privatization,

without any public-private competition, as many as 210,000 federal and military positions. Some of the non-competitive privatization mechanisms endorsed by Secretary White, such as employee stock ownership plans and transition benefit corporations, were even criticized by OMB officials. Other options mentioned by the Secretary were quasi-governmental corporations and the ever-popular "negotiate with private sector." The one thing all of these options have in common is that they are not provided for in law. Even the Secretary acknowledged that "Most of these alternatives to A-76 will require enabling legislation that does not exist yet."

What a difference three months make. Come January 2003, the Army's privatization-related Congressional correspondence included this paragraph:

"The implementation of competitive sourcing will adhere to congressionally approved process, e.g., A-76. The only known exceptions to the requirement for public-private competition are where 10 or fewer civilian employees perform the function where preferential procurement programs are used, and where legal restrictions against using the A-76 process apply to the function."

Whether the Army will keep this assurance obviously remains to be seen. However, there are several disturbing questions that need to be answered:

A. Is the Army out there all by itself?

Some would write off the Army's preference for corporate welfare-style privatization as anomalous. However, senior DoD officials have expressed similar preferences. For example, on March 3, 2002, Michael Wynne, the Principal Deputy Undersecretary of Defense for Acquisition, Technology & Logistics, wrote in his written testimony, that the department intended to "divest" itself of "non-core" work. When asked what he meant, Mr. Wynne said that "divestiture means that you transfer assets to the private sector, and, actually, they absorb the assets in line and the employees as well, as is different, if you will, than competitive outsourcing where you only compete the positions. You might want to just transfer the assets and essentially convert that activity to the private sector."

B. Where does OMB stand on "Third Wave"-style privatization?

While offering criticisms of parts of the "Third Wave," OMB officials refused to repudiate the initiative, notwithstanding that it was completely contrary to the Administration's ostensible emphasis on "competitive sourcing." In fact, when AFGE National President Bobby L. Harnage, Sr., challenged Ms. Styles to condemn the wholly anti-competitive nature of the "Third Wave," she, according to GovExec.com, "refused." It's quite an exaggeration to say it's a privatization effort," she said... Styles had no reservations about the size of the Army plan. "It

certainly is up to the departments and agencies to determine how they want to do it,' she said.³⁷

Moreover, at the 2002 hearing in which Mr. Wynne extolled the benefits of divestiture, Ms. Styles did not rebuke him. And when the discussion turned to how DoD would hit its 50% privatization quota after achieving its 15% privatization quota, Ms. Styles said purposefully, "there will be *appropriate* elements of competition for the next 35%." (Emphasis added.) What does that mean?

C. What changes might OMB and DoD seek that would allow the Army to pursue the "Third Wave" and still keep its pledge?

For example, it is rumored that DoD will submit in its next FY04 legislative package a proposal to gut or even eliminate 10 U.S.C. 2461, which, however inadequate, does ensure that Pentagon privateers cannot simply give away the department to contractors.

Moreover, OMB has never repudiated its September 2001 proposal to drastically expand the preferential procurement program to allow small businesses to receive contracts of any size to perform work that is currently performed by federal employees without any public-private competition.

However, it is actually OMB's ongoing rewrite of the A-76 process that will allow the Army—and the other services as well—to ride the anti-public-private competition "Third Wave." The rewrite expands on the already-existing direct conversion authorities to give work performed by federal employees to contractors without public-private competition. More importantly, as noted earlier in my testimony, the rewrite creates hidden direct conversion authorities, particularly if competitions are not concluded within arbitrary deadlines. A DoD official who appeared at a recent American Bar Association event, in Annapolis, MD, confirmed during a question-and-answer session that all of the services are interested in the direct conversion possibilities of the arbitrary competition deadline. In other words, the A-76 rewrite is in many ways a stealthy continuation of the discredited "Third Wave" by other means.

5. The threat to eliminate in-house depot maintenance and arsenal capabilities

Section 324 of the defense authorization bill would lead to the destruction of any in-house depot maintenance capacity by radically changing the 50/50 rule governing the split of depot maintenance workload between federal employees

³⁷ One can only assume Ms. Styles means that it "is certainly up to agencies to determine how they want to do it" when agencies want to do *even more* privatization than OMB has directed. Agencies that do less have had, according to Coast Guard memoranda, their in-house workforces slashed in retaliation by vengeful OMB privateers.

and contractors. Under the Pentagon's proposal, contractors would keep their 50% of the depot maintenance workload and then be given a chance to gradually take away the 50% of the work performed by federal employees.

Without that safeguard DoD would have privatized all public sector depot maintenance workload long ago. Although chronically underfunded, the depots are the one part of DoD that has managed to escape the devastating consequences of DoD's self-inflicted "human capital crisis," precisely because of rules like 50/50, that ensure a strong in-house capability.

It is important to note that even with the necessary statutory safeguards, depot employees are still better service providers than their contractor counterparts. According to GAO, depot prices are lower for 62% of items repaired by both depots and contractors.

The Pentagon's recommendation ignores the reason for having public sector depots--so the warfighters always have a reliable capability to maintain national security-critical hardware that can respond instantly to ever-changing geopolitical conditions.

Some may try to sell this unwise proposal by arguing that the only way depots will be able to bring more work on site, and thus make the installations less vulnerable to the next round of base closure, will be through public-private partnerships, and that the only way to establish such partnerships is by gutting the 50/50 rule. Wrong. Per 10 U.S.C. 2474, work performed by contractors at depots with Centers of Industrial and Technical Excellence, which were established by the Congress precisely to encourage public-private partnerships, doesn't count towards the 50/50 rule. Consequently, there is no rationale for gutting the 50/50 rule other than destroying the in-house depot maintenance capacity.

AFGE is also concerned about the privatization threat faced by the Army's arsenals. Per 10 U.S.C. 4532, Secretary White could "abolish any United States arsenal that he considers unnecessary" without any Congressional input. Given the Army's "Third Wave" privatization bias, it is imperative that such unfettered discretion be restricted, perhaps in the same fashion as the Congress restricted Secretary White's discretion to privatize, divest, or transfer the Corps of Engineers in the FY03 Omnibus Appropriations Bill.

6. The threatened introduction of the Service Acquisition Reform Act

Perhaps the most anti-taxpayer bill to be considered in the House of Representatives during the last Congress was the Service Acquisition Reform Act (SARA, H.R. 3832). The legislation was strongly criticized by agencies' inspectors general; public interest groups such as the Project on Government

Oversight; and several unions, including the American Federation of Government Employees, American Federation of State, County, and Municipal Employees, International Association of Machinists, National Association of Air Traffic Controllers, National Treasury Employees Union, Professional Airways Systems Specialists, and AFL-CIO Professional Employees Department.

Last year's SARA was a lengthy service contractor wish-list that would have, among other things, drastically reduced government oversight of service contractors, created many additional possibilities for service contractor conflicts of interest, substantially reduced competition between service contractors, and significantly increased the losses to taxpayers from service contractor waste, fraud, and abuse. SARA is being redrafted, and it is rumored that the legislation may have found something it didn't have in the 107th Congress: a Senate sponsor. If the SARA to be introduced in the 108th Congress is anything like its predecessors, keep your hands on your purses and wallets at all times.

Among other things, the SARA legislation would have encouraged the use of risky share-in-savings contracts, which are proven losers and completely antithetical to public-private competition. Share-in-savings contracts are grievously mislabeled since they require agencies to borrow from contractors at high interest rates in exchange for services. This form of contracting has been criticized for locking agencies into long-term contracts that prevent shifting to superior contract or in-house options. Moreover, according to Ms. Styles' own testimony, although in existence for more than 25 years, share-in-savings contracts have not produced any savings.

A contractor lobbyist, who is close to the bill's House sponsor, had touted the bill in testimony on the basis of a share-in-savings contract at the Department of Education (DoEd). It wasn't until recently that an Inspector General (IG) investigation determined that DoEd's experience with share-in-savings was actually disastrous. According to the IG, "Performance measures were so inadequate that it could not be determined if the contractor was in compliance with the terms of the contract. There was no annual comparison of costs under the agreement to an outside market to determine whether the agreement actually provided the "best value". Even more alarming, an overstated baseline "create(d) a larger contractor payment than is actually earned."

Finally, the use of share-in-savings is indisputably anti-public-private competition and clearly promotes privatizing the jobs of federal employees without giving them a chance to compete. At the last moment, as an amendment to a popular piece of E-Government legislation, a controversial pilot program was established late in 2002 allowing agencies to undertake a handful of share-in-savings contracts. These experiments will surely be the subject of very thorough scrutiny because of the serious threat each and every one of them poses to the interests of taxpayers.

Conclusion

Chairman Hefley, I thank you again for holding this afternoon's hearing and inviting AFGE to testify about the important issues raised in your invitation letter as well as those important to rank-and-file DoD employees. Please let me know if AFGE can be of any service as you prepare your subcommittee's portion of this year's defense authorization bill. I look forward to attempting to answer any questions that you and your colleagues might ask.

**STATEMENT OF
Mark Wagner
Vice-President, Federal Government Relations
Johnson Controls World Services, Inc.**

**BEFORE
Military Readiness Subcommittee
House Armed Services Committee**

**HEARING ON
Proposed Revisions to OMB Circular A-76**

March 25, 2003

Mr. Chairman and members of the Military Readiness Subcommittee, my name is Mark Wagner and I am Vice President for Government Relations for Johnson Controls World Services, Inc. I also serve as Chairman of the Public Policy Committee for the Contract Services Association of America, which represents over 400 private sector companies, both large and small, providing a wide array of services to federal, state, and local governments. We are also members of a multi-association competitive sourcing coalition, which will be submitting a statement for the record.

Background

Johnson Controls, Inc. is a 117-year old Fortune 200 Company with global sales in buildings controls technology, automotive interiors, and facilities outsourcing for both government and commercial markets. We provide facility management and base operations support for the Departments of Defense and Energy, NASA and other federal agencies. On the commercial side of Johnson Controls' facility management business, our customers include companies such as IBM, Compaq, CSC, Hoffman-LaRoche, Novartis, Exxon-Mobil and BP Amoco.

We have had extensive experience with the A-76 Competitive Sourcing process. Johnson Controls has been involved in more than a dozen large A-76 competitions. We are familiar with the process, including the bidding, the appeals, the protests and the successful transition from public to private sector performance. Also, I worked closely with my boss, Mark Filteau, as he served on the GAO lead Commercial Activities Panel.

Enhanced Competition

Thank you for the opportunity to be here today and to share an industry perspective on the proposed revisions to OMB Circular A-76 recently proposed by the Office of Management and Budget. The revisions represent a big improvement in the competitive sourcing process and will increase private sector competition for the government services, which is good for the taxpayer.

The current A-76 process is broken. They take too long, cost too much, and give unfair advantages to the in-house public-sector bids. Many companies will not bid on A-76 competitions under the current rules. Without active bidding by industry there is no true competition and the government will never know if it has gotten the best deal.

The revisions work to address this problem by tightening the timelines for competitions. They make the process fairer by treating the public sector proposals ("tender offers") like private sector bids and by evaluating all proposals, both public and private, under the same set of rules. These changes will encourage more private sector firms to bid on A-76 opportunities. Increased competition will not only produce cost savings for the government but also encourage innovation, which is the key to improving the quality of service delivery.

Commercial Activities Panel Recommendations

The revisions reflect the recommendations made earlier this year by the Commercial Activities Panel. In its April report to Congress, the Panel recommended:

"That in order to promote a more level playing field on which to conduct public-private competitions, the government needs to shift, as rapidly as possible, to a FAR-type process under which all parties compete under the same set of rules."

By shifting competitive sourcing to an approach governed by the Federal Acquisition Regulations, the proposed A-76 revisions will be a logical move to a process that is fair and time-tested with clear rules. Unlike the current A-76 rules, the FAR offers a well-documented process that has the confidence of both the government and industry.

Accountability

The revisions enhance the accountability associated with competitive sourcing. The FAR-type approach offers a procurement process that is more transparent than the current A-76 approach. In addition, conflict of interest rules are more clearly defined. Under the proposed revisions, competition officials and individuals participating in the process must comply with procurement integrity, ethics and standards of conduct rules.

Most important, if the public sector wins the competition, its proposal will be treated like a contract ("letter of obligation"). This means that government officials will monitor the cost and service performance levels of the public sector's Most Efficient Organization (MEO). The MEO's performance will now become a past performance factor -- the basis for whether they can win future work, just like a contractor.

Evaluation Factors

By shifting to the FAR, the revisions will allow agencies to make decisions solely on cost or on cost technical trade-offs. For the first time, public sector employees will be

allowed to make offers based on best value, and therefore encourage innovation from those who are most familiar with the work – the government workforce.

Under the current A-76 process, the public sector proposal is driven primarily to slash cost, reduce personnel, and only meet the minimum performance level required by the statement of work. Under a FAR-based process, public sector employees could be encouraged to come up with innovative approaches and solutions, not discouraged into a process in which cost is the only factor.

Protest Rights

Since the public sector is competing under the same set of rules and is treated as a true bidder, the MEO should have the right to protest to the General Accounting Office or file in the United States Court of Federal Claims to resolve competition disputes. The proposed revisions are silent on this particular issue, presumably leaving the question to be resolved by GAO and the Court. However, logical reasoning and fairness led the Commercial Activities Panel to recommend these appeal rights be given to the public sector. In other words, if the public-sector team (represented by the Agency Tender Official) is truly treated as a bidder, it should have protest rights.

Other Issues

It is important to understand that shifting to a FAR-type process is not a cure for all the problems facing competitive sourcing. Significant issues remain. Cost comparisons between public and private sector bids will continue to demand careful scrutiny and fairness. Improvement is also needed in developing quality statements of work, the heart of the solicitation. Also, all competitors need to be ensured equal access to relevant information, including workload data, in order to make credible proposals.

The proposed A-76 revisions also pose some questions that must be addressed. Most notably, whether the MEO has unlimited attempts to make sure its proposal is technically qualified. We also have concern over the proposed “phased-process” in which the competition is prohibited from moving into the second phase until the MEO’s bid is deemed to be technically acceptable. We have recommended that it be eliminated in favor of the “integrated process” which better reflects a FAR-type process. These and other issues should be resolved through the public comment process.

Unjust Criticism of Proposed Revisions

Let me take a moment to address some of the criticism leveled at the proposed revisions.

First, many have expressed concern over the 12-month deadline called for to complete a competition, claiming the timeframe is too short. However, it should be noted that the

Navy's own 1997 "Guide to Conducting Commercial Activities Studies" called for:

"Successfully completing the competition for a commercial activity within a 12-month time frame."

Many competitions drag on for years because in most cases agencies have up to four years to complete a study and competition. The current process is plagued with delays, which is one of the prime reasons private sector firms refuse to compete. These delays are also unfair to the incumbent employees who are forced to live with the indecision. Consequently, it is critical to the success of the process to have real time deadlines imposed.

Second, there seems to be concern over the fact that the process allows "subjective factors" and not just low cost. A revised circular based on the FAR would allow choosing from a suite of evaluation factors to be used, including low price/technically acceptable, depending upon the needs presented by the customer's acquisition strategy.

Best value includes cost and other objective criteria, including technical solutions and capabilities, past performance, innovation and other measurable criteria. It is used every day in federal procurements in private-private competitions under the FAR and has withstood scrutiny and bid protests. To limit public-private competitions to cost only would be a disservice to the government, which needs innovative technical solutions – whether the private sector or public sector employees offer them.

A third criticism is that there is no system in place to hold contractors accountable, or mechanisms for tracking the cost and quality of service contracting. Unfortunately, the myth that contractors are not accountable continues to be perpetuated, despite rigorous accountability during competition, during performance of the work, and at the end of the contract.

Virtually all service contract work is subject to intense competition between private sector competitors. These competitions are closely monitored by federal officials and subject to pricing, conflict of interest and past performance evaluation under strict guidelines.

The FAR requires private sector contractors to open their books and records for financial audits. Types of audits performed under a typical government contract include: pre-award audits; periodic financial audits during the contract; invoice audits; incurred cost audits; and final closeout audits just to name a few. The FAR also requires most service contracts to contain a myriad of other requirements, governing labor and compensation, safety and environmental regulations – all subject to oversight and audits.

With regard to performance, most of our service contracts require quarterly reviews. Our customer examines every aspect of our work to determine if we are meeting the performance metrics detailed under our contract. Failure to meet our performance metrics puts our fee at risk.

I would like to note a statement made recently by Angela Styles, Director of the Office of Federal Procurement Policy:

"Federal contractors have more than 1,800 pages of regulations to hold them accountable. In the proposed (A-76) process, a team of federal employees that win a competition may have 5 pages of guidance in a circular to hold them accountable."

Fourth, it has been said that contractors have incentives to reduce costs by requiring inferior compensation packages for those who perform government work. The fact is that the Service Contract Act (or the Davis-Bacon Act) governs the vast majority of wages paid by federal service contractors to their employees. If there is concern over the compensation packages for service contract employees, it should be directed to the current wage and benefits standards set by Department of Labor, not the competitive sourcing process.

Fort Lee Example

Finally, it is worth examining a real life A-76 example.

Johnson Controls recently transitioned the workforce at Fort Lee, Virginia, having won the A-76 competition for the base operations support contract. In total, the procurement took over two years. When we were finally awarded the contract and interviewed the workforce, we offered positions to nearly everyone. Unfortunately, many employees left the site during the long, drawn out process. Consequently, we had to go "outside the fence" and hire approximately 100 new workers, most of whom received a boost in their wages and benefits from their current local jobs.

Today, two things should be noted. First, our Army customer is very pleased with our performance. Currently, we are working hard supporting Army mobilization efforts to Southwest Asia. Second, we are pleased to say our Fort Lee employees voted in favor of being represented by a private sector union, TWU Local 527. Recently, we completed negotiations on a fair collective bargaining agreement for the workforce.

Conclusion

The current A-76 process is broken. It does not encourage competition from the private sector, and without competition, it becomes a useless and wasteful exercise. The challenge is to create a new process that encourages competition, treats public sector employees with respect, and provides for a fair system under which all competitors, public and private, are judged under the same set of rules. The spirit of the proposed revisions lives up to that challenge.

Thank you for this opportunity to testify.

**QUESTIONS AND ANSWERS SUBMITTED FOR THE
RECORD**

MARCH 25, 2003

QUESTIONS SUBMITTED BY MR. HEFLEY

Mr. HEFLEY. Just one other question. And I should know this. But I am not sure I do. If I am an 18-year employee of the Federal Government, and my job goes privatized, am I vested in 18 years of my retirement? Or do I lose all of my retirement?

Ms. STYLES. [The witness did not respond in a timely manner.]

QUESTIONS SUBMITTED BY MR. TAYLOR

Mr. TAYLOR. Okay. Could I have an answer in writing as to whether or not you will continue for those jobs that are privatized to enforce veterans' preference?

Ms. STYLES. [The witness did not respond in a timely manner.]

Mr. TAYLOR. Okay. And also in writing what would be your policy for Guardsmen and Reservists who are involuntarily activated in situations like what we see now in Iraq. Right now if a Congressional employee is activated and called up with their Guard and Reserve unit, the Congressional office still continues to pay them, and they draw their pay as a Reservist. And it is obviously a cost to the government, but we try to be fair to these people so they do not take a beating in their pay if they are called to a much more dangerous job. My question is will you require that of those contractors who will be taking jobs either from DOD employees or any other government employee? If we take a job that is now a federal employee job, and because of A-76 you contract it out, is that contractor going to be required to have the same level for Guardsmen and Reservists that the United States government now has?

Ms. STYLES. [The witness did not respond in a timely manner.]

Mr. TAYLOR. I am just curious. Do you have any knowledge of requirements that would fall into the category of employers' support for Guard and Reserve that are included in these contracts? Are there any requirements to, say, either match the pay or pay the difference in pay that a Guardsman and Reservist would have suffered by being involuntarily activated? Is there anything like that happening now?

Mr. WAGNER. [The witness did not respond in a timely manner.]

QUESTIONS SUBMITTED BY MS. BORDALLO

Ms. BORDALLO. If I could ask just one more question? It has to do with your remarks about the percentage of A-76 contracts awarded to small businesses. You said the majority are awarded to small businesses. I was wondering whether you could break out in total dollar amounts what the value of small business contracts are compared to big business?

Ms. STYLES. [The witness did not respond in a timely manner.]

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QUESTIONS SUBMITTED BY MR. REILLY

Mr. REILLY: Just one other question. And I should know this. But I am not sure I do. If I am an 18-year employee of the Federal Government, and my job is privatized, and I worked in 18 years of my employment for me. I lose all of my seniority?

Mr. STRAIN: [The witness did not respond in a timely manner.]

QUESTIONS SUBMITTED BY MR. TAYLOR

Mr. TAYLOR: Okay. Good. I have an answer in writing as to whether or not you will continue for those jobs that are privatized to enforce veterans' preferences?

Mr. STRAIN: [The witness did not respond in a timely manner.]

Mr. TAYLOR: Okay. And also in writing what would be your budget for Government and Veterans who are involuntarily activated in situations like what we saw now in Iraq. Right now it's a Congressional employee is activated and called up with their Guard and Reserve unit. The Congressional office still continues to pay them, and they draw their pay as a Reservist. And it is obviously a cost to the Government, but we try to be fair to those people so that the cost takes a beating in their pay. It they are called to a much more dangerous job. My question is will you require that of those contractors who will be taking jobs either from DOD employees or any other Government employees? If we take a job that is now a federal employee job, and because of A-76 you contract it out to that contractor going to be required to have the same level for Government and Veterans that the United States Government now has?

Mr. STRAIN: [The witness did not respond in a timely manner.]

Mr. TAYLOR: I am just curious. Do you have any knowledge of requirements that would fall into the category of employees' support for Guard and Reserve that are included in those contracts? Are there any requirements for any other units like pay or pay the difference in pay that a Reservist and Veterans would have and how they are involuntarily activated? Is there anything like that happening now?

Mr. STRAIN: [The witness did not respond in a timely manner.]

QUESTIONS SUBMITTED BY MR. BORDALINO

Mr. BORDALINO: If I could ask just one more question. It has to do with your remarks about the percentage of A-76 contracts awarded to small businesses. You said the majority are awarded to small businesses. I was wondering whether you could break out in total dollar amounts what the value of small business contracts was compared to big business?

Mr. STRAIN: [The witness did not respond in a timely manner.]

